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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)	
)	Case No. 2:16-cr-046-GMN-PAL
Plaintiff,)	
)	Las Vegas, Nevada
vs.)	Thursday, April 13, 2017
)	Courtroom 7C, 8:06 a.m.
ERIC PARKER, O. SCOTT)	
DREXLER, RICKY LOVELIEN,)	JURY TRIAL DAY TWENTY-NINE
STEVEN STEWART, TODD ENGEL)	
and GREGORY BURLESON,)	
)	
Defendants.)	
)	<u>C E R T I F I E D C O P Y</u>

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE GLORIA M. NAVARRO,
UNITED STATES DISTRICT JUDGE, CHIEF

APPEARANCES:

See next page

COURT REPORTER:

Heather K. Newman, RPR, CRR, CCR #774
United States District Court
333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
(702) 471-0002

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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13 Also present:

14 Gwen Wilson
15 Bryan Ginn
16 Christine Abbott
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1 LAS VEGAS, NEVADA; THURSDAY, APRIL 13, 2017; 8:06 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 (Outside the presence of the jury at 8:06 a.m.):

5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: All right. Good morning. You may be
7 seated.

8 COURTROOM ADMINISTRATOR: This is the time set for
9 Jury Trial Day Twenty-Nine in Case Number 2:16-cr-046-GMN-PAL,
10 United States of America vs. Eric Parker, O. Scott Drexler,
11 Ricky Lovelien, Steven Stewart, Todd Engel, and Gregory
12 Burleson.

13 Counsel, please make your appearances for the record.

14 MR. MYHRE: Good morning, Your Honor.

15 Steve Mhyre, Erin Creegan, Nadia Ahmed, and
16 Nick Dickinson.

17 THE COURT: Good morning.

18 MR. TANASI: Good morning, Your Honor.

19 Rich Tanasi for Steven Stewart. Also with us is
20 Gwen Wilson and Bryan Ginn.

21 Thank you.

22 MR. MARCHESE: Good morning, Your Honor.

23 Jess Marchese on behalf of Eric Parker.

24 MR. LEVENTHAL: Good morning, Your Honor.

25 Todd Leventhal on behalf of Mr. Drexler.

1 MR. GEORGE: Good morning.

2 John George on behalf of Todd Engel.

3 MR. PEREZ: Good morning, Your Honor.

4 Shawn Perez on behalf of Ricky Lovelien.

5 MR. JACKSON: Good morning, Your Honor.

6 Terrence Jackson on behalf of Gregory Burleson. Also
7 with me is Christine Abbott.

8 THE COURT: Good morning, everyone.

9 All right. Well, before we begin, I do need to make
10 preliminary remarks, just to remind everyone about the conduct
11 that's expected in the courtroom.

12 This is a courtroom; it is not a sporting event. So
13 it is never appropriate for anyone to make any expression
14 regarding your opinion. And that expression cannot be verbal
15 or body language no matter how much you may agree or disagree
16 with what is being said, please remember there is no
17 expressions that can be made. They will be distracting to the
18 jury and the marshals are authorized to remove anyone from the
19 courtroom that does make any kind of inappropriate body
20 language expression or verbal expression.

21 In addition, people may not speak out of turn. The
22 defendants are represented by counsel and they will speak
23 through their attorneys. Any defendant who makes an outburst
24 or any body language expression or any kind of distraction
25 that's an outburst of any kind will be removed from the

1 courtroom. We do have the holding cell that's just right next
2 door and it does have a speaker system so that the individual
3 will continue to hear what is happening in the courtroom, but
4 they will not be permitted to stay for the remainder of the
5 day.

6 Also, please make sure to double-check that you do
7 not have a cell phone, laptop, iPad, any kind of electronic
8 device with you. Even if it's turned off or in privacy mode,
9 or vibrate mode, it's still not permitted in federal court.
10 The attorneys and some of the defendants do have electronic
11 devices but that is so that they can review their notes and the
12 discovery evidence and to be able to present evidence here in
13 court. No one is permitted to make an audio recording or a
14 video recording in federal court and none of those devices will
15 be used in that way.

16 All right. So we have set up the podium so that it's
17 facing the jury. You also have the long-neck microphones at
18 your desk so you're welcome to stay at your desk if you need
19 to, but the podium is set up.

20 Who's going to be going first today?

21 Mr. Perez?

22 MR. PEREZ: Yes, Your Honor.

23 THE COURT: And then who will be going second?

24 MR. JACKSON: I will, Your Honor.

25 THE COURT: Mr. Jackson, and then Leventhal last.

1 All right. Okay.

2 All right. So, can we go ahead and bring in the
3 jury?

4 All right. Let's go ahead and do that. Thank you,
5 Aaron.

6 COURTROOM ADMINISTRATOR: Yes, Your Honor.

7 (Brief pause in proceedings.)

8 COURTROOM ADMINISTRATOR: All rise.

9 (Jury returned to courtroom at 8:12 a.m.)

10 THE COURT: All right. Everyone may be seated.

11 We're joined by the jury. We welcome them back.
12 Thank you for coming in a little earlier this morning. We're
13 going to begin with Mr. Perez, who's representing Mr. Lovelien.

14 Go ahead, sir.

15 MR. PEREZ: Good morning, ladies and gentlemen,
16 Your Honor, counsel. By now you know my name is Shawn Perez
17 and I represent Ricky Lovelien, one of the defendants in this
18 case.

19 Yesterday was the anniversary, if you will, of the
20 incident in Bunkerville. And, you know, I had planned on
21 making this speech yesterday morning and one of the things that
22 struck me was that -- and it's in a video that we saw over and
23 over again, and Cliven Bundy said, I didn't know what I was
24 going to do until this morning, and that was on the 12th.
25 That's kind of how I feel here. I mean, everything has been

1 shifting. We've heard from numerous defense attorneys, we've
2 heard from the Government, and this case seems complicated, but
3 it's really not. And it's really not complicated when it comes
4 to Mr. Lovelien. And, I mean, I've been in the back most of
5 the time. You haven't seen too much of Mr. Lovelien. You've
6 never seen a picture of Mr. Lovelien pointing a weapon.

7 The Government, yesterday, they started out with
8 Facebook posts by Mr. Lovelien. And, you know, I started
9 thinking, well, you know, what's going on here? Where are we?
10 And then it reminded me of books that my kids had. They're
11 called *Where's Waldo?* Some of you might be familiar with
12 those. What it is, it's a collage, a backdrop and then you've
13 got to try and find this one individual amongst this backdrop.
14 They're all dressed the same. They all look the same, but
15 there's one fundamental difference. And that's kind of the way
16 I feel about Mr. Lovelien here.

17 Now, there's no doubt that Mr. Lovelien was a militia
18 member. We -- we heard that he may have been the leader of the
19 Montana State Defense Force. We heard Agent Sulley say that
20 it's not a crime to be a member of a militia. Militias were
21 part of the beginning of our country. I learned this morning
22 that militia was responsible for the Battle of Saratoga and --
23 in the American Revolution. So, it's part of our history.
24 It's not necessarily a bad thing.

25 What does make it bad is if there's an agreement to

1 do something that's illegal.

2 Now, the Government, in this case, has tried to show
3 that there was a plan. Now, I mean, Mr. Bundy didn't know what
4 the plan was until the 12th. So, it's kind of difficult to say
5 what that plan was.

6 The objects of this conspiracy were, according to the
7 Government, to assault federal officers. Well, we didn't see
8 Mr. Lovelien assaulting anyone. We never saw him threaten
9 anyone.

10 Extortion? Well, we know that on the 11th that the
11 gathering of cows was over. It was done. They weren't going
12 to do anything further.

13 Now, the Government made a point of saying, Well, you
14 know, Mr. Lovelien was a co-conspirator because he was running
15 security for Mr. Bundy. And they get this "running security"
16 from a Facebook post by Mr. Lovelien's sister. I don't know if
17 any of you have siblings, but my sister has said that I've done
18 things that I didn't do. She's embellished things, but the
19 important thing is Mr. Lovelien didn't post that and a number
20 of those posts -- and I'm not going to bring up each and every
21 one of them -- but, when you look at the evidence and you look
22 at the PowerPoint presentations and the Facebook posts and
23 reposts, a number of those are not to Mr. Lovelien, nor are
24 they from Mr. Lovelien. The one about the Bundy ranch had
25 nothing do with Mr. Lovelien.

1 Sure, Mr. Lovelien reposted certain things. Now, is
2 there any harm that?

3 Well, there's one in particular.

4 Bryan, 190.

5 (Government Exhibit 190 published.)

6 Let's start with Mr. Lovelien's belief and -- and --
7 now, this is Mr. Lovelien's essentially political speech, I'll
8 say. You know, he's complaining about politicians not doing
9 the right thing. And if you're not going to do the right
10 thing, then we're going to -- we're going to get rid of you.
11 We're going to elect someone else. We're going to try and
12 change things. Certainly there's nothing illegal about it.
13 And, in fact, this "take America back," you know, if -- I think
14 what does he say in here -- "I demand our country back."

15 Well, in the last elections we heard a lot about
16 that. Even Rand Paul said, in declaring his presidency, he
17 said, you know, "I'm going to help America take our country
18 back."

19 We heard talks of "draining the swamp." "Take our
20 country back."

21 It's not advocating violence. I mean, it's a message
22 that, you know, this is a government, you know, of the people
23 by the people for the people. That's what it is. It's what
24 it's supposed to be.

25 Now -- and it's not so much the message as the

1 ability to bring the message. That's the First Amendment.

2 And I'm not here to argue that what they did was
3 protected by that. That's for you to decide. But, when it
4 comes to things like threats, well, number one, you don't -- I
5 don't think you've heard any threats from these defendants, no
6 verbal threats. The Government would like you to believe that
7 just holding a gun, or in Mr. Lovelien's case, not even holding
8 it. I mean, he had it on his shoulder the entire time with the
9 barrel down. We painstakingly went through a video, almost
10 frame by frame, because we had an NHP officer say that
11 Mr. Lovelien pointed the gun over that Jersey barrier, when, in
12 fact, he never did. That same officer said that he got the
13 sense that Mr. Lovelien was a superior, and he got that based
14 on conversation that he had with Mr. Engel and that
15 Mr. Lovelien walks up and that conversation changes, so he
16 says. I asked him, "Well, did he say anything?" "No, I don't
17 recall." "Did he do anything?" "I don't recall." It's the
18 same guy that said Mr. Lovelien was pointing a weapon over the
19 Jersey barrier. And when we got through the video and I said,
20 "Well, we didn't see it." He said, "Oh, maybe it was in
21 another video." Well, we never saw that. Absolutely nothing.

22 Now, in order to prove conspiracy they've got to show
23 an agreement.

24 Now, well -- let me -- let me start over.

25 Let's talk about the Montana State Defense Force for

1 a second.

2 Bryan, 199.

3 (Government Exhibit 199 published.)

4 Now, there's an individual. You've heard his name.
5 He's not a part of this case. His name is Mr. Lardy, and he
6 seeks out Mr. Lovelien because he's looking to join a militia.
7 And he -- he doesn't make it a secret that he feels that the
8 Government is his enemy and so he's looking to join a militia.
9 So, Mr. Lovelien says, well -- he doesn't respond to that, but
10 he does say that we're a legitimate militia, you know, we --
11 we're trying to get recognized by the state, we'll -- you know,
12 the governor may call on us, we're training for things like,
13 you know, to be first responders and help out in times of, you
14 know, civil emergencies and things of that nature.

15 Now -- Bryan, 200.

16 (Government Exhibit 200 published.)

17 Now, Mr. Lardy ends up joining the militia, he ends
18 up joining Montana State Defense Force and then just before the
19 Bunkerville incident, now he wants to resign. And in his
20 resignation, in his post to Mr. Lovelien he says that, you
21 know, it's -- you know, "No hard feelings. It's a tactical
22 decision. I'm off to war." Well, that tactical decision, you
23 know, I'm -- I'll suggest that perhaps it's because
24 Mr. Lovelien wasn't off to war.

25 Now, if you look at -- Exhibit 213, Bryan.

1 (Government Exhibit 213 published.)

2 This is the same day of that post. And this is in
3 that long -- I don't know you recall, but we went through,
4 like, 200 pages of Facebook posts that day. Most of it
5 Mr. Lovelien didn't respond to anything, but he does say that
6 the entire point of the militia going to Bunkerville was, you
7 know, not to start violence; it was to prevent violence. So
8 now you have -- you have a -- a fundamental difference between
9 Lardy, who is going, saying, basically, hey, I'm going to take
10 on the Government -- and he may have been the only one, I don't
11 know -- and Lovelien, who is saying, you know, that's not what
12 this is about. I mean, that's -- so now, when you're talking
13 about agreement, it's more of a disagreement as far as
14 Mr. Lovelien's concerned.

15 Now, if it was just specific counts like assault or
16 threatening, extortion, there probably isn't enough there to
17 convict Mr. Lovelien of any of those counts. He was never in
18 the wash.

19 In fact, Bryan, bring up Simpkins 144.

20 (Government Exhibit 144 published.)

21 Now, this is really important because we know
22 Lovelien was never in the wash. We know he never pointed a
23 weapon, and yesterday we heard the Government say he was on the
24 bridge. Yes, he was on the bridge, at 2:30 in the afternoon.

25 Now, when Agent Simpkins testified as to the

1 placement of all the gunmen, he put Mr. Lovelien way over here
2 (indicating). That was when the skirmish line was forming.
3 That's when the BLM said they're pointing weapons at us. Well,
4 obviously that wasn't Mr. Lovelien; he wasn't even there. He
5 was still -- I guess this is to the west, so he never made it
6 to the bridge at that point.

7 Now, Bryan, 145

8 (Government Exhibit 145 published.)

9 Now -- how do you clear this? Have I cleared it?

10 COURTROOM ADMINISTRATOR: Got it.

11 MR. PEREZ: Now, this is when Dan Love is at the
12 gate. This is, like, sort of the height of everything, think
13 they're going to be releasing the cattle or they've come to
14 some sort of an agreement. I mean, Lovelien has no idea. He
15 hasn't spoken to anybody and the Government can't say that
16 Lovelien met Mr. Payne or Mr. Bundy. There's just no evidence
17 of that.

18 Mr. Lovelien is over here (indicating); the bridge is
19 here (indicating).

20 Now, if you recall from the video, with, I believe it
21 was Sergeant Serena, Lovelien walks -- you see this from the
22 Madsen's-cam, he walks slowly to the bridge or to the bridge
23 area. He gets to about here (indicating), and what does he do?
24 He sits on the Jersey barrier and has a bottle of water. This
25 guy never goes over the barrier, never moves from the shoulder,

1 doesn't really talk to anybody, doesn't do anything. Just
2 sitting there. Basically, you know, watching, like anyone
3 else.

4 Now, the Government has to show, in this case,
5 especially in regards to these individual counts of assault and
6 threat and extortion, that Mr. Lovelien did more than just
7 associate with these people. They have to show that -- that
8 he, in fact, did something to help them.

9 Now, we heard from Mr. Parker. And Mr. Parker said,
10 yeah, we jumped in some -- and this is from the video. We
11 jumped in some guy's truck. We didn't even know who he was.
12 Now the Government is saying, oh, Mr. Lovelien is running
13 security. Mr. Parker is doing security. They didn't know each
14 other? I mean, there's no communication between them. I mean,
15 even assuming that there was some agreement somewhere else, one
16 would assume that they would know something. He didn't even
17 know who he was. So they get in the truck; they go there. And
18 that's not really enough.

19 I mean, even -- even assuming if Mr. Parker did
20 anything that is illegal -- and I'm not suggesting that he
21 did -- did Lovelien know that he was going to do that? No.
22 There's no evidence to show that he did, or that he knew.
23 There's more evidence to show that he was going there not to
24 create a violent atmosphere, but to prevent a violent
25 atmosphere.

1 There is a bumper sticker, it's been around for
2 years. It says, "I love my country, but I fear my government."
3 And when you look at situations like this, I mean, that bumper
4 sticker starts to make sense. I mean, we all have certain
5 principles that we want to live by and those weren't met here.

6 Now, I think -- well, at least in my opinion, from
7 the evidence, it shows the biggest problem we had here was
8 communication. This event on the 12th never had to happen.
9 And it wasn't the fault of these defendants or the Bundys or
10 anybody. Because all Dan Love had to do was say, Listen, we're
11 pulling out tomorrow. We're leaving tomorrow. We'll be out at
12 high noon, whatever. You think they would have had that
13 problem if they had just communicated that?

14 And -- and not only that, they didn't even
15 communicate it to the other BLM officers that were on scene.
16 One guy said -- I think it was Brunk, who said, I didn't know
17 why everybody was backing up. Nobody knew what was going on.
18 That creates a little bit of tension. Maybe it's what he
19 wanted.

20 Now, in this case the evidence, there was, well, 25
21 or 30 witnesses. There were -- Agent Willis testified he spent
22 a thousand hours, a thousand hours looking at photos, looking
23 at Facebook pages. He said that he looked at a half a million
24 Facebook posts were photos. He was able to come up with eight
25 photos of Mr. Lovelien. Not one is he pointing a gun. Not one

1 is he telling anybody what to do.

2 In fact, Bryan, bring up 318.

3 (Government Exhibit 318 published.)

4 Yesterday this particular photo sat up on the screen
5 for about 10 minutes while the Government was doing their
6 closing. And this is pretty demonstrative of what Mr. Lovelien
7 was doing, standing there. You know, at this time, this is a
8 photo from Mr. Gourgeon. There were speakers going on. And
9 Lovelien is just sitting there listening to these speakers. I
10 mean, if he's running security, why isn't he at the rally site
11 with the other individuals that are in front of the stage? Why
12 is there no photo of him? Why is there no video of him? Why
13 is there no statement? No interview? Nothing.

14 Now, you saw those pictures. You saw those videos.
15 You saw those Facebook posts. You never saw Lovelien in the
16 wash. He never made it there. You never saw him on the
17 bridge. He wasn't there until 2:30. Everybody's gone.

18 Now, going back to what I said earlier, Clive -- even
19 Cliven Bundy didn't know what he was going to do. In fact, I
20 think that was at 9 o'clock in the morning on Saturday, the
21 12th. He had no idea. Now, if he had no idea, he didn't
22 communicate that idea to anyone, because he didn't know. How
23 would Lovelien know?

24 Now, what we do know is that there was a -- I believe
25 it was a press release or a statement that came out, you know,

1 BLM is going to cease operations. We do know that. We know
2 that Ms. Arnett, I mean, she came in and she testified that she
3 was there listening to the -- to the speech and it doesn't
4 matter that she may have not really understood what she heard,
5 you know, or even that she heard it correctly because, I mean,
6 there's no mal intent in thinking, oh, well, they're going to
7 release the cows, I'm going to go watch. And that's what all
8 these people did.

9 I mean, it was after that -- they go to the wash, to
10 the bridge, wherever. Remember, Mr. Lovelien was never in the
11 wash, wasn't really on the bridge. In fact, I believe --
12 Bryan, go back to 145.

13 (Government Exhibit 145 published.)

14 I asked, I'm not sure if it was Willis or Simpkins,
15 but you can rack your brain and see if you are this, but I
16 asked him, What was the vantage point that Mr. Lovelien had
17 from that particular area of the highway. You know, could he
18 see what was going on back here with the BLM? No. He couldn't
19 see that. They couldn't see him. All he could see was this
20 abutment or the -- you know, the base of the bridge. I mean,
21 his line of sight was probably, you know, marginal at best of
22 the gate.

23 So, it's kind of hard to -- to make that quantum leap
24 that he was trying to do something to bring those cows or, you
25 know, get the government to turn those cows over, or that he

1 was threatening anyone, or assaulting anyone. The evidence is
2 just not there

3 Now, one of the things that the Government made a
4 point of was that Mr. Lovelien was a recruiter. He sent people
5 there. Well, Operation Mutual Aid, we don't really know much
6 about them. There were some Facebook posts. There were some
7 reposts. Some of them happened when Mr. Lovelien was already
8 in Bunkerville and we heard the Government's witnesses say that
9 Mr. Lovelien didn't post anything while he was in Bunkerville.
10 And the important thing about the messages that were sent out
11 by Lovelien, it wasn't, you know, go grab your guns, let's go
12 take on the feds, it was, hey, the Bundys need help, they're
13 calling for help. This is the guy that's coordinating it and
14 he sends -- you know, he sends out Ryan Payne's number. Now,
15 is that enough? I suggest to you that it's not. Not beyond a
16 reasonable doubt. Did he know that that's what they would do?
17 Did they know? Not really.

18 Now, the evidence in this case against Mr. Lovelien
19 is -- is -- is not really direct evidence; it's more
20 circumstantial evidence than anything else. And the judge is
21 going to -- or has instructed you on, you know, that type of
22 evidence basically, you know, you have to decide what to do
23 with that. But, if, after having reviewed all the evidence in
24 this case, you have any doubt, okay, then the Government has
25 not proven its case beyond a reasonable doubt. And if you can

1 draw two or more reasonable conclusions -- and I use the word
2 "reasonable" because you're going to see that in the
3 instructions --

4 MR. MYHRE: Objection, Your Honor. Misstates the
5 law.

6 THE COURT: Sustained.

7 MR. PEREZ: Well, your -- if you can draw two or more
8 reasonable conclusions from the evidence, one of those
9 reasonable conclusions is innocence and the other is guilt,
10 then that's not proof beyond a reasonable doubt.

11 MR. MYHRE: Objection, Your Honor. Misstates the
12 law.

13 THE COURT: Sustained.

14 MR. PEREZ: Well, you're -- if you can draw two or
15 more "reasonable" conclusions from the evidence, one of those
16 reasonable conclusions is innocence and the other is guilt,
17 then that's not proof beyond a reasonable doubt.

18 MR. MYHRE: Objection, Your Honor. Misstates the
19 law.

20 THE COURT: Sustained.

21 MR. PEREZ: It's not the law, Your Honor.

22 If you have two choices and they both are -- they
23 seem plausible to you, the Government hasn't proven its case
24 beyond a reasonable doubt because --

25 MR. MYHRE: Objection, Your Honor. Again, that

1 misstates the law.

2 MR. PEREZ: That's not a statement of the law.

3 THE COURT: The jury will have a copy of the law. I
4 read it to you yesterday, and that's what they will follow.
5 Mr. Perez can argue how that should be interpreted, how the
6 facts in this case should be applied to those laws that are
7 already been provided to the jury and will, again, be provided
8 to the jury, not any other different law that doesn't apply to
9 the case.

10 MR. PEREZ: Right.

11 Well, ladies and gentlemen, if you look at the -- if
12 you look at the evidence and you can say to yourself, Hey, you
13 know, maybe not, maybe not, that's not enough. The Government
14 hasn't proven its case. Because maybe not is . . . you have a
15 doubt. You have reasonable doubt. And if that's the case,
16 ladies and gentlemen, then you have to find Mr. Lovelien not
17 guilty.

18 Now, you know, at this point, you know, I'm just
19 going to ask you flat out, you know, the Government -- I'm
20 going to tell you the Government has not proven the case beyond
21 a reasonable doubt as to Mr. Lovelien and with that, I'll ask
22 you to return a verdict of not guilty on all counts.

23 Thank you.

24 THE COURT: Thank you, Mr. Perez.

25 Mr. Jackson.

1 MR. JACKSON: Yes. Thank you, Your Honor.

2 Take me a minute or two to get organized here.

3 I really want to thank each and every one of you
4 jurors for being here on this very long and sometimes tedious
5 trial. You have been wonderful. I want to thank you.

6 Judge Navarro, I want to thank my co-counsel, who
7 have done a lot of work for me, made it a lot easier for me. I
8 thank you for your outstanding work.

9 I hope that I'm not redundant in telling you things
10 you've already heard. It's difficult when I only have one
11 chance to talk to you and I have to try to summarize two and a
12 half months of testimony in a few minutes. I'd give you the
13 long version, but I don't think you want that. I think you
14 probably would like me to summarize this as quick as possible.

15 But it is a very important day in Mr. Burleson's
16 life. It's important for all of us. And I'm going to tell you
17 today that I think Mr. Burleson, my client (indicating), is a
18 very lucky man. And you may think it's strange that I say
19 that, but I think he's very lucky because he's being tried in
20 an American court where we have certain things that are
21 different from almost any other country in the world.

22 Number 1. He has due process of law, which means
23 that during this whole long, sometimes tedious, process he had
24 the right to question witnesses, he had the right to bring on
25 witnesses, he had the right to have a fair proceeding during

1 the whole trial and I'm -- we're really grateful for that.

2 Secondly, he had the right, from the beginning, till
3 the end of the case, until it comes to you, ladies and
4 gentlemen, to the presumption of innocence. Until all the
5 evidence is in, when he walked in the door, he was presumed
6 innocent, even though the Government was trying as hard as they
7 can to prove him guilty of numerous criminal charges, serious
8 charges, he was presumed innocent. When you walked in the door
9 and you took your oath as jurors, you were to consider him
10 presumed innocent. Not presumed guilty. Not that he was
11 likely guilty, not what the newspapers might have said that,
12 you know, there were these guys out there involved in these
13 serious things; he was presumed innocent. Innocent as a
14 newborn babe. So you have to look at each piece of evidence to
15 decide whether or not the Government has met its burden on each
16 element of each count.

17 But, the other things that's related to the
18 presumption of innocence is the standard of proof we have in
19 this country. It's not that he's probably guilty or maybe
20 guilty. There has to be proof beyond a reasonable doubt, and
21 that's Instruction No. 3. And I'm going to read it to you
22 because I think it's so important. We have just a little bit
23 of -- from the last counsel spoke about it briefly, but I want
24 to read it to you directly from Instruction No. 3. It says,
25 "Proof beyond a reasonable doubt is proof that leaves you

1 firmly convinced that the defendant is guilty. It is not
2 required the Government prove guilt beyond all possible doubt."

3 Well, the Government doesn't have to prove it beyond
4 all possible doubt, but they have to prove it -- proof that
5 leaves you firmly convinced that the defendant is guilty.

6 Then it goes on to say, "A reasonable doubt is a
7 doubt based on reason and common sense and is not based purely
8 on speculation."

9 So it's a doubt based on reason. Thinking. Reason
10 and common sense.

11 "It may arise from a careful and" -- it -- "and
12 impartial consideration of all the evidence, or -- or from lack
13 of evidence."

14 So if there's lack of evidence, you may consider
15 that. If there's lack of something that should be there,
16 that's something you can consider in deciding if there's
17 reasonable doubt.

18 You're finally instructed, "If after a careful and
19 impartial consideration of all" -- the totality of evidence --
20 "all the evidence, you are not convinced beyond a reasonable
21 doubt the defendant is guilty, it is your duty to find the
22 defendant not guilty. On the other hand, if after a
23 careful" -- "a careful and impartial consideration of all the
24 evidence you are convinced beyond a reasonable doubt the
25 defendant is guilty, it's your duty to find the defendant

1 guilty."

2 Now, that's one of the fundamental principles of our
3 jurisprudence and I want you to ponder, think about that,
4 meditate. Meditate what that means. Just think about -- think
5 about that as we -- as we kind of reason together and talk
6 about some common sense things.

7 Prosecutor will get up and tell you they've met their
8 burden or they'll tell you that there's no reasonable doubt
9 here, but I want you to think about what that means, what it
10 means to our system.

11 But I'm going to tell you the most important thing.
12 The most important thing in our system is the fact that the
13 defendant has 12 people that are going to decide his case from
14 all walks of life. That's you, the jury system. That's why
15 Gregory Burleson is a lucky man today. It's not the press.
16 It's not the prosecutor. It's not even the judge, a learned
17 judge, who makes the decision. We don't have trials in secret.
18 Look at all the people here. We have open trials in this
19 country, but the decision is made by 12 people who are
20 selected, who take an oath to make a decision that is a very
21 difficult decision. And you have sworn an oath and you all
22 said in voir dire you would have the courage, the courage to do
23 what's right. Now, no one, none of these people here, none of
24 the defendants or none of the attorneys, none of these people
25 that are spectators can criticize your decision, whatever it

1 is, and I will not, and I don't think anyone here can if you
2 take this decision to heart and do what you think is right. So
3 I ask you to do what you think is right in this case and that's
4 what I ask. And that's what everybody here wants you to do.

5 Now, I'm going to tell you, based on th evidence that
6 I've seen, it reminds me of the novel by Franz Kafka, *The*
7 *Trial*. Mr. -- Kafka wrote a trial by a man that woke up and he
8 was being charged with a crime he didn't even know what he was
9 charged with. Well, that's an existentialist novel written
10 about 75 to a hundred years ago, but the facts of this case,
11 the Government suggests that a number of men went to a
12 demonstration. They went to a demonstration, with guns. Now,
13 it's legal in this country to carry guns. Some of them marched
14 around in the wash. Some of them stood on freeway overpasses.
15 Confrontation/demonstration went on for about an hour. There
16 was yelling and hollering. An hour later, the BLM got in their
17 cars and left. A little bit after that, the cows were
18 released. About a year later, after investigation, the
19 Government says BLM were threatened, they were intimidated,
20 crimes were committed, a whole bunch of crimes.

21 Now, I want to thank Mr. Dickinson. He argued for me
22 most of my argument for Mr. Burleson that he wasn't involved in
23 a conspiracy. Mr. Dickinson -- Mr. Dickinson properly pointed
24 out that my client wasn't even at the Bunkerville site until
25 noon. He pointed out that my client, Mr. Burleson, wasn't with

1 the other individuals when Cliven Bundy started his rant and
2 telling everybody to go get the cows. My client didn't arrive
3 on the scene, according to all the video evidence and
4 everything else, until approximately 11:59. Then he tried to
5 suggest, well, maybe he was guilty of some conspiracy somehow
6 because he went down in the wash and was walking around.

7 If you read the instructions on conspiracy, read them
8 carefully. I want you to read all the instructions the judge
9 gave you. The judge will tell you that, you know, this is the
10 law. The attorneys sat down with the judge beforehand and
11 tried to work out the best instructions, the fairest and most
12 accurate instructions on the law, but, you know, conspiracy
13 requires a number of things. It requires that you have to have
14 an agreement. It requires you have to agree not only to be
15 together -- it's not agreeing to go to a dance or a
16 demonstration -- you have to agree to go -- do a crime. And
17 you have to have -- it's more than just an association. You
18 have to agree to do something unlawful.

19 Now, there's no evidence whatever that my client knew
20 any of the Bundys. There's one -- there's some evidence that a
21 couple days beforehand he had a post or at some -- media thing
22 that he knew about on 4-10, knew about that Bundy was sending
23 out requests to have people join his demonstration. There's
24 also some indication that he left on the 11th to attend this
25 demonstration. But there's no indication that he had ever met

1 any of the Bundys before this; father, son, any of the
2 associates of Cliven Bundy. There's no indication that he knew
3 any of the people that are defendants -- defendants with him at
4 this table -- at this table behind me (indicating). There's no
5 indication he communicated with any of those people before
6 4-12-2014. But he arrives up there on 4-12-2014, about noon,
7 and there's evidence that Mr. Burleson was walking around in
8 the -- in the wash, with a gun.

9 Government has video. They have video evidence of my
10 client in the wash with a gun.

11 The Government said, and I think some of their agents
12 combed through hundreds and hundreds of hours of video evidence
13 from many different sources, people that took video, people
14 that -- they have airplanes flying overhead, everything else,
15 so, but of all the evidence, video evidence, that got maybe a
16 dozen or so shots of my client with his gun. They got him
17 moving around on the left side of the wash, the middle of the
18 wash, the right side of the wash. They got -- most of the time
19 he's got his gun pointed down, in what's called the "low ready"
20 position, or they got him with his gun in a sling. On one
21 picture they got him squatting down. And one picture, I think,
22 they have him pointing his gun up in the air like this
23 (indicating), but they have no pictures of him pointing a gun
24 at someone like this (indicating). Boom. I'm going to get
25 you. I'm going to shoot you. But they try to suggest that,

1 oh, he's involved somehow in attempting to threaten these BLM
2 agents.

3 Well, let's look at the evidence. Was there evidence
4 that he went there to threaten or intimidate or assault BLM
5 agents?

6 No BLM agent identified him, said he pointed a gun at
7 me, I saw him. There's some agents that say, yeah, that's him,
8 that's a picture of him over there. See that little dot over
9 there, that's Mr. Burleson.

10 There's some that say yeah, he got within 30 feet of
11 the gate one time, but there's no one that said Mr. Burleson
12 made any threats, any verbal threats.

13 There was one picture, which the Government may refer
14 to on their rebuttal, where Mr. Burleson was kind of walking to
15 the left and Ammon Bundy was about 12 feet away from him but he
16 was walking kind of away from Ammon Bundy. The Government, I
17 think, was trying to suggest that he was somehow communicating
18 with Mr. Ammon Bundy to try to suggest somehow that he was
19 conspiring with Mr. Bundy. Look at that picture. Take a look
20 at it. Does it look like he's talking to Mr. Ammon Bundy? No.
21 But, of course, they had -- when -- in cross-examination they
22 could say, Well, we couldn't hear him saying anything or they
23 had no way to show that he was actually communicating with
24 Mr. Bundy.

25 Now, the evidence the Government has brought in this

1 case is of three or four kinds: We've got eyewitness
2 testimony; we got video testimony; and then got we got
3 testimony from the defendant; and we got the defendant's
4 Facebook posts. That's basically the evidence the Government
5 brought forward against my client. I'm going to talk about
6 each one just briefly.

7 Let's talk about the eyewitness testimony, the people
8 that were actually there on 4-12.

9 They brought you BLM agents, maybe 10, 12 BLM agents.
10 You can look at Instruction No. 29 that talks about the
11 credibility of witnesses. Every one of those BLM agents was
12 scared to death, although they didn't put it in their reports.
13 Every one of those BLM agents said it was if not the scariest
14 thing in their life, one of the most scary things that anybody
15 could ever experience, although they didn't put it in their
16 reports. But I want you to take a look closely at the video.
17 Look at the video, and listen -- listen to the video. And if
18 they look to you like they were really, really scared, then
19 give them the credibility that they should get. If they don't
20 look really scared, then evaluate their testimony
21 appropriately.

22 You know, they weren't ducking down behind something
23 (indicating) while this confrontation was going on. Most of
24 them were walking around. A lot of them had their back to the
25 people that had -- that supposedly had guns. A lot of them are

1 talking or making silly jokes. Some of them kind of ridiculous
2 jokes, but we won't hold that against them. And they said,
3 well, they were nervous or anxious or whatever.

4 We can compare those eyewitnesses with the Metro
5 cops. The Metro cops, they see violence all the time. A lot
6 of them probably deal with robberies, homicides, other more
7 serious charges than BLM agents who probably don't as often --
8 now, I don't know -- deal with as much serious violence, but
9 the Metro cops, if you look at the videos, do not seem quite as
10 anxious or as afraid in the videos as did the BLM agents, or at
11 least they didn't testify they were quite as anxious. There
12 seemed to be just a little schism between the Metro cops and
13 the BLM. I don't know why that was. Think about it.

14 One of the things you have to consider, Instruction
15 29, credibility of witnesses, is the bias of witnesses. You
16 can consider that in evaluating the testimony.

17 You know, a couple of the BLM agents said they were
18 really upset by what happened. Their pride -- their pride was
19 hurt. They had to give back these cows and they felt they had
20 let down -- they had -- they had let down the government
21 because they felt like they had given back cows that the
22 government had some interest in. But, you know, the deal had
23 already been done. As my co-counsel have said, this had been
24 negotiated. This had been resolved. There were a couple
25 people still wanted to hang on to these cows.

1 Now, most of the -- most of the protestors, or most
2 of the people that went out to the site, or the impoundment
3 site, on 4-12, around 11:30 or so, believed the deal had been
4 done, believed the cows were going to be returned, or at least
5 it was ambiguous. The -- there was, I would submit to you, an
6 ambiguity from the people that went out to the protest site,
7 but that doesn't matter. As far as my client goes,
8 Mr. Burleson, because he was not at the rally. He was not at
9 the 9 o'clock rally when Cliven Bundy said go get the cows.
10 Government wants to say he's guilty of extortion or he's guilty
11 of helping Mr. Bundy get his cows back by some kind of
12 intimidation or extortion or crossing state lines to help him
13 intimidate these federal officers into giving the cows back.
14 He wasn't even there when Cliven said that. Nobody even knew
15 that Cliven was going to say that day or most people didn't
16 even know that deals had been worked out or what the deal was
17 or whatever. My client shows up around noon, at least that's
18 all the evidence we have in front of us. He goes to the site.
19 He's wandering around with his gun. Doesn't point it at
20 anybody, according to the evidence, and then he leaves. And
21 the witnesses said, the Government witnesses said they don't
22 know where he went. They didn't follow him when he left. And
23 that's it.

24 The Government's divided this case up with -- they
25 gave you a big timeline. They brought in an FBI agent that had

1 a timeline. But basically there's really three parts of the
2 timeline I want you to think about. What's the relevant
3 timeline here? What happened before 4-12 is -- is -- is
4 important to think about. There were three events that
5 happened before 4-12 which influenced why the protestors showed
6 up, and that's what happened to Margaret Houston and to the
7 Bundy boys, which I think outraged many of the protestors and
8 got them to come. That's how Bundy, Mr. Cliven Bundy
9 manipulated a whole bunch of people to come out to his ranch
10 and come out to the site. People were -- people were angry.
11 People were mad. And they put -- like Mr. Parker testified,
12 they wouldn't have driven hundreds of miles to a protest unless
13 they were mad at something the government did. So the
14 incidents that happened of -- in early April are relevant.
15 They came into evidence and they show what influenced those
16 people to go there.

17 But, you know, the most important -- the most
18 important is just that little bit of 4-12-14, and as far as
19 Gregory Burleson, what's relevant to him is from noon on
20 4-12-14 until about 1:30, when he left the scene. That's --
21 that's all the evidence they have of Greg Burleson. He was
22 there from noon and the last -- last evidence they have was him
23 leaving around 1:30 of 4-12-14. Then he's gone. Nothing.

24 Then the Government brings in lots of evidence after
25 that of Mr. Burleson's, both Facebook posts, and then starting

1 in November, more than a year later, he makes a statement to
2 the Government, the Long Bow, and then he makes another
3 statement to another FBI agent, Mr. Caputo.

4 The Government wants to blur all of these things
5 together as part of one conspiracy. Every one of these events
6 that happened over a period of a year and a half, it's all one
7 big joint conspiracy. That's one way of looking at it, but
8 they're all separate events. There was basically a
9 demonstration that happened on 4-12-14. People went there for
10 different reasons. Then afterward, different people, different
11 individuals, made different decisions in their life. The
12 Government began an investigation. They focused on my client
13 and they used all their guile, all their sophistication and
14 they were able to manipulate my client into making some really
15 stupid statements. My client did not hold up to the
16 interrogation of the United States government agents. There is
17 an instruction that tells you that you are to consider all --
18 all of the circumstances of interrogation when you consider it.

19 What happened at Long Bow when my client was there?
20 What happened?

21 First of all, the whole charade that they had at
22 Long Bow, you need to consider that. One of the more
23 sophisticated schemes I've seen by law enforcement. They went
24 to a lot of trouble to set this up, but that itself may not
25 have been so bad but when they started feeding my client

1 alcohol -- and they asked each of the defendants to do that.
2 My client, unfortunately, was the only one that had the
3 weakness for alcohol. And you can look on -- look on the tape
4 and see if you think he was under the influence. Look at it.
5 Watch it. Listen to it. Listen to what he said. Listen. See
6 if you think that maybe he was under the influence.

7 But, what else do we know? What else do we know? We
8 know the Government didn't care about the fact that he was
9 suffering from a disease, epilepsy.

10 MR. MYHRE: Objection, Your Honor.

11 THE COURT: Sustained.

12 MR. JACKSON: All right. They knew that he had
13 epilepsy, but did they care about him not --

14 MR. MYHRE: Objection, Your Honor. Facts not in
15 evidence.

16 THE COURT: Sustained. There's no evidence of that.

17 MR. JACKSON: It was in --

18 THE COURT: No evidence has been submitted. Where?

19 MR. JACKSON: That he had a seizure disorder. The
20 Government testified they knew that and that's in the -- that's
21 in the statement.

22 MR. MYHRE: Objection, Your Honor. There's no
23 evidence that --

24 THE COURT: Well, I'm going to allow the jury to
25 decide to -- whether or not they remember that as happening.

1 If the jury doesn't remember it, then you don't consider it.

2 MR. JACKSON: All right.

3 THE COURT: If you remember it, you may consider it.

4 MR. JACKSON: If you remember, at -- the Government
5 agent knew that he had a seizure disorder, you can consider
6 that as one of the circumstances of whether or not the
7 Government was -- may have been taking advantage of him when
8 they questioned him. If you -- if that was one of the things
9 that was brought out in his interrogation, and that's one of
10 the things you can consider. And I think that the evidence
11 will clearly show that; you have to listen though. And I want
12 you to listen to every piece of evidence that you think is
13 important and you can ask that you get a chance to listen to it
14 all. And I'm confident that if you do, you will find that that
15 is in the evidence.

16 Now . . . the tape does show that they gave my client
17 two alcoholic drinks and the Government admitted that. Maybe
18 my memory's bad on that, but I do remember that. And if you
19 remember that, you can consider why the officers would give
20 alcohol to a man before they interrogated him. If they wanted
21 to get accurate information from an individual, would that be
22 the best way to do it, or would that be the way to get him to
23 make accurate or inaccurate statements?

24 But the most important thing is you have to evaluate
25 the statements my client made with the facts. Now, this is one

1 of those paradoxical things that are hard for an attorney to
2 argue. I have to say, you know, what my client was telling you
3 doesn't fit the facts. And accept the video evidence as more
4 persuasive than what my client said.

5 Now, most of the time, when I have a case, and
6 there's video evidence, I tell my client you better plead
7 guilty because there's video evidence.

8 MR. MYHRE: Objection, Your Honor, as to what he's --

9 MR. JACKSON: I'll -- I'll withdraw -- I won't say
10 that. But in this case, my client's a lucky man because
11 there's 500,000 images of video evidence and none of them show
12 him pointing a gun at anybody. None of the video evidence
13 shows him committing a crime of extortion. The video evidence
14 contradicts him committing any crime. The video evidence
15 contradicts the Government's agents being in any great fear.
16 So my client's a lucky man.

17 He's lucky because he's in an American courtroom and
18 he's lucky because you, ladies and gentlemen of the jury, are
19 going to make the decision that will decide his fate. And I
20 leave the case with you. I'm happy with that. My client is
21 happy with that.

22 I thank you for your time. There's a lot more I
23 could say. Mr. Myhre's going to get up after one more of my
24 co-counsel gets a chance to speak and I -- I've condensed this
25 a lot. I could go on for five more hours, but you probably

1 don't want me to. You've heard a lot. And . . . there's a
2 whole lot I've left out. I had about 50 pages written here,
3 but I know collectively the 12 of you probably have a much
4 better memory of what happened than I do, maybe even a better
5 memory than Mr. Myhre has, and he's got a really good memory
6 and he and the other four prosecutors are outstanding
7 prosecutors, but again, we rely on the jury to make the best
8 determination in this case, and I know you will.

9 THE COURT: All right. We're going to go ahead and
10 take a break. During this break I admonish the jury that you
11 are not to discuss this case with anyone, not even your fellow
12 jurors nor permit anyone to discuss it with you.

13 Please do not read or listen to or view anything that
14 touches upon this case in any way.

15 Do not attempt to perform any independent research or
16 investigation, and do not form any opinion.

17 We'll take about 15-minute stretch break and then we
18 won't take another break until lunch, so . . . let's stand for
19 the jury, please.

20 (Jury excused from courtroom at 9:13 a.m.)

21 THE COURT: Okay. Go ahead and be seated. The jury
22 has left the courtroom. I just want to put on the record that
23 I did look up the mention of the epileptic seizure. It is in
24 the Long Bow video and unfortunately, it's in the portion that
25 was not played. So it comes up on the portion which is

1 48:23:122 and it comes up at 49:09:965, and those are portions
2 that were not played. Just -- I --

3 MR. MYHRE: They weren't admitted; correct,
4 Your Honor?

5 THE COURT: I think -- right. They weren't admitted
6 and they weren't played but I think we instructed the jury just
7 to let their memories guide them as to whether or not they
8 remember that.

9 MR. JACKSON: Your Honor, I believe the agent
10 testified that he -- yeah, Caputo testified he knew it.

11 MR. MARCHESE: Yeah.

12 THE COURT: I'm -- I'm not going to mention it to
13 them again, but if -- if you want to, for your own record, if
14 you want to find where it is that you think that the witness
15 testified to that, I'll surely let you put that on the record
16 when we come back from the break.

17 All right. So we'll be back in about 15 minutes.

18 COURTROOM ADMINISTRATOR: Off record.

19 (Recess was taken at 9:14 a.m.)

20 (Outside the presence of the jury at 9:28 a.m.:)

21 COURTROOM ADMINISTRATOR: All rise.

22 THE COURT: All right. I think we're ready to go
23 back on the record. Are there still -- still a few people
24 coming in. It will take us a couple minutes to get the jury in
25 as well.

1 Are you ready, Mr. Leventhal? Are you all set up?

2 MR. LEVENTHAL: Yes, I'm ready. Thank you,
3 Your Honor.

4 THE COURT: Okay.

5 All right. You want to go ahead and call in the
6 jury.

7 (Brief pause in proceedings.)

8 COURTROOM ADMINISTRATOR: All rise.

9 (Jury returned to courtroom at 9:33 a.m.)

10 THE COURT: All right. Everyone may be seated.
11 We're joined by the jury.

12 And now we'll be hearing from Mr. Leventhal on behalf
13 of Mr. Drexler.

14 MR. LEVENTHAL: Thank you.

15 Good morning, ladies and gentlemen.

16 Good morning, Your Honor.

17 Good morning, counsel.

18 I -- I've thought about this and I -- one of the
19 questions I've had throughout this case is sort of what would
20 ignite the passions of thousands of people to travel to a small
21 town in Nevada from all over the country. And I thought about
22 what would motivate a young man from Idaho to leave his family
23 and travel 10 hours to a town called Bunkerville.

24 Now, the Government seems to indicate that it was
25 over cows. Cows. Is that -- is that logical though? Over

1 cows? Is that -- is that -- does that resonate with you? I
2 mean, because the Government seizes assets all the time; right?
3 It's legal for them to do that. They do it all the time. They
4 have tax liens, foreclosures, seizures. It's legal. They do
5 it. It's never a problem. Why this time? Why did so many
6 people come together?

7 Mr. Drexler never cared about cows and the Government
8 has not offered you proof that he cared about cows. There's no
9 Facebook. There's not a shred of evidence. There's no video
10 that he went down there to help the Bundys get their cows back.
11 Nothing.

12 Mr. Drexler, in his Long Bow video, he spoke to all
13 of you and he told you, he went down because of the federal
14 overreach and a -- what he perceived a First Amendment zone.
15 What did he mean by a federal overreach? What did he mean by
16 that? What did he mean by the First Amendment zone?

17 Bryan, if we could play video 1.

18 (Exhibit published.)

19 I can assure you, ladies and gentlemen, that
20 Mr. Drexler did not come down for cows.

21 That First Amendment zone, you know, if you imagine
22 there was over 575,000 acres out there. It's in the middle of
23 the desert, and BLM decides that they're going to corner off a
24 little area, a little pen, off to the side, somewhere far away,
25 miles from anywhere, and if you exercised your First Amendment

1 outside of that zone, that's what happened to you.

2 MR. MYHRE: Objection, Your Honor. No evidence to
3 that effect, at all. Zero.

4 THE COURT: Sustained.

5 MR. LEVENTHAL: You know, you'll never know what
6 hunger is until you haven't eaten and you'll never know what
7 poverty is until you have no money in your pocket and you'll
8 never know how important First Amendment is until you lose it.

9 MR. MYHRE: Objection, Your Honor. There's no
10 evidence of any First Amendment loss of anything.

11 THE COURT: Sustained.

12 MR. LEVENTHAL: Now, the judge is going to give you
13 some jury instructions and I'm going to go through a few of
14 them. The first one is Instruction No. 2 -- you can take that
15 down, Bryan.

16 "Charge against the defendant not evidence." And I
17 know other attorneys have spoken to you about it, I just want
18 to go through it again, just briefly.

19 "The defendants are presumed to be innocent, unless
20 and until the Government" -- the Government -- "proves the
21 defendants guilty beyond a reasonable doubt. In addition, the
22 defendants do not have to testify or present any evidence to
23 prove innocence; the Government has the burden of proving every
24 element of every charge beyond a reasonable doubt."

25 "Reasonable Doubt-Defined."

1 Starts out with proof beyond a reasonable doubt, but
2 then the next sentence actually defines reasonable doubt.
3 Probably should be backwards, but I'll start. "A reasonable
4 doubt is a doubt based on reason and common sense and is not
5 based purely on speculation. However, proof beyond a
6 reasonable doubt is proof that leaves you firmly convinced that
7 the defendant is guilty."

8 Now, in the law -- and you may have heard about some
9 of these levels of proof -- that's -- I want to go through them
10 with you.

11 First of all, no evidence. Let's say the Government
12 offered you no evidence at all. You'd have to find Mr. Drexler
13 not guilty.

14 A scintilla of evidence, that would be a small amount
15 of evidence that they brought forward, you would have to find
16 Mr. Drexler not guilty.

17 Reasonable suspicion. We've heard all about that.
18 It's like a hunch. You'd have to get -- find Mr. Drexler not
19 guilty.

20 Probable cause. That's reasonable, trustworthy
21 information that a crime was committed. Not enough. You'd
22 have to find Mr. Drexler not guilty.

23 A preponderance of the evidence. That's another
24 standard. That's really like a civil standard where it's like
25 the scales of justice, they tip, just in favor of one party to

1 the other. 51/49 percent. You'd have to find Mr. Drexler not
2 guilty.

3 Clear and convincing evidence. That's evidence
4 that's highly and substantially more probable than not. Again,
5 you'd have to find Mr. Drexler, if the Government hasn't
6 brought you that, not guilty.

7 It's not until we get to the reasonable doubt
8 standard that the judge is going to give you and then the
9 beyond a reasonable doubt standard that the judge is going to
10 give you is when the Government has proven their case. And in
11 order for the Government to prove their case, they do it
12 through evidence: Through witnesses, through testimony,
13 through all the things that you've sat here for the last two
14 months. So I'd like to go through some of that evidence.

15 First of all, we've talked about Sheriff Gillespie
16 and what he said at that rally. And the Government has
17 repeatedly replayed that speech over and over and over again.
18 This was three years ago. But they asked the witnesses, does
19 he say -- is it over now? They use present tense, past tense,
20 is there a verb, a noun. I mean, you know, they decipher it
21 down, but let's put it in perspective and use our common sense
22 because we don't leave it at the courtroom door; we bring our
23 common sense in here.

24 First of all, they're listening to the sheriff. Not
25 a deputy. Not a Bundy. Not a militia member. The sheriff.

1 Second, it's at a rally. There's hundreds of people
2 out there. They're all yelling, screaming. We heard the wind
3 was blowing. People are cheering. And the sheriff's on a
4 stage with some kind of makeshift microphone and he says what
5 he says and people hear what they hear. And yeah, it's easy
6 three years later. Perception/deception. Three years later we
7 can try to get it down. What did he say? Is the BLM? Was the
8 BLM? Come on? Common sense.

9 He says, a press release was sent out. BLM's ceasing
10 their operations. Gold Butte now open. BLM removing their
11 assets -- and again, if I'm not verbatim, you will decide on
12 exactly what he says -- BLM removing their assets from Clark
13 County. That's what he says. That's the sheriff of Clark
14 County saying it. The main man with the badge; right?

15 What does common sense tell you about that?

16 Well, it's uncontroverted -- what I mean is, there's
17 no evidence that it's -- that what was being said and what was
18 being heard, I think that there's clearly a discrepancy at this
19 point.

20 Mr. Drexler had just driven, as the testimony came
21 out, 10 hours. He had just arrived a few hours before the
22 speech. He's never, ever been in Bunkerville before. He
23 doesn't know what an ICP was or where it is or what equipment
24 the BLM had over there or how long they needed to get out of
25 there.

1 Does that give you a little doubt and is that
2 reasonable?

3 Cliven Bundy then speaks. And think about it
4 logically. If someone walks into this courtroom right now and
5 looks at the Government and says, I want all the metal
6 detectors taken down, and I want you to disarm all the
7 marshals, and I want free food because people are hungry in the
8 cafeteria, you'd think he was crazy, a lunatic, but the
9 Government wants those words -- and those words -- to be his,
10 and they're not his. They weren't his. Just because he drove
11 to a rally and someone gets up and says some -- makes some
12 crazy speech doesn't make it his. They need more.

13 Not only are they not his words, that doesn't join
14 him in a conspiracy, ladies and gentlemen. It doesn't join him
15 in a conspiracy because he goes to a rally based upon what he
16 sees and hears and does and he drives. It doesn't put him into
17 a conspiracy because some man makes some crazy demands. They
18 can play it over and over. They're not his words.

19 The facts at this moment, when that speech was made,
20 was that the Government has not given you one piece of evidence
21 that links Mr. Drexler to a conspiracy. There's not one
22 Facebook page. There's not one text. Not a phone call.
23 There's no evidence of communications with the Bundys, with any
24 of the militia. Drexler was not on the stage. Drexler was not
25 in front of the stage wearing that camo that they keep playing

1 over and over. He had no communications in his ears. He was
2 at a protest at a rally listening to people. Those weren't his
3 words; he was just there.

4 Does that give you doubt and is that reasonable?

5 So he waits around, like, as you hear, many, many
6 people do. About an hour goes by, as we all know, and Cliven
7 makes another speech and he says something like, Alls we got to
8 do is go out there and unlock the pen, cows will be home.
9 Unlock the pen; the cows will be home. Then he says close down
10 the freeway for safety. Cowboys are going.

11 Now, if you're in the frame of mind or in the state
12 of mind that I've just explained to you where Mr. Drexler was,
13 not knowing anything going on, sheriff just spoke, you've got
14 Cliven just speaking, he's saying just unlock the pens, what he
15 doesn't say is, go over there, unlock the pens, oh, by the way
16 there's a bunch of BLM agents over there and when you get
17 there, we're going to need to fight for my cows. A lot of
18 people went over there. Probably a lot of people wouldn't have
19 gone over there had they known or thought that the BLM was
20 there. That's logic. That's common sense.

21 And remember, let me show you Instruction 7.1.

22 Aaron.

23 7.1. "On the other hand, one who has no knowledge of
24 the conspiracy but happens to act in a way which furthers some
25 object or person of the conspiracy, does not thereby become a

1 conspirator. Similarly, a person does not become a conspirator
2 merely by associating with one or more persons who are
3 conspirators, nor merely by knowing that the conspiracy
4 exists."

5 The mere fact that Mr. Drexler went down there, heard
6 the words, does not put him in a conspiracy without more, and
7 they've brought you nothing else. Not a Facebook page. Not a
8 communication with any Bundy, any militia, anybody.

9 Now, perception/deception. The Government has played
10 over and over the Cliven Bundy I'll-do-whatever-it-takes-to-
11 get-my-cows-back. As a matter of fact, we had a couple agents
12 up here who tape-recorded him, or the Bundy sons, saying, Oh,
13 we'll do whatever it takes. Again, without more, those words
14 are not Mr. Drexler's. That does not join him in a conspiracy.
15 Just because he goes to a rally does not put him in a
16 conspiracy. There is no proof that he heard any of those
17 audiotapes that you heard about, I'll do whatever it takes. No
18 proof of that.

19 As a matter of fact, when you put all those speeches
20 together, the sheriff and Cliven and, you know, it's over, just
21 go get my cows, common sense says that it's over.

22 Does that give you doubt? And is that reasonable?

23 Now, after everybody sort of, we all heard the story,
24 get it -- they all get in the car, they get into everybody's
25 car, I mean, I think we even had Mr. Lynch, who was in one of

1 the Bundy's cars, everybody sort of -- nobody really knew where
2 they were going so people just hopped into cars. And, you
3 know, it's not really hard to imagine that people are going to
4 go see the cows. I -- I -- I think that's -- it's somewhat
5 logical. I mean, you know, it's not -- I think the Government
6 wants to make that out to some kind of nefarious reason to go
7 over there. Why else go over there?

8 But, you know, I mean, I go -- I'm a -- I love
9 baseball. I go watch baseball and I'll stay to watch baseball
10 until the 15th inning. It doesn't matter. My wife, she wants
11 to leave after the 3rd inning, you know, after a hotdog. I
12 want to stay till the end. Some people wanted to stay till the
13 end. That should not make it, so that by them going to see the
14 cows come home, part of a conspiracy to go extort, intimidate,
15 or do anything that the Government is suggesting that all of
16 these actions are doing, without more. And there's nothing
17 more that my client did, or that you will ever see, that the
18 Government has ever produced, that there's a communication, a
19 writing, or anything for that matter, that put him into that
20 conspiracy that they want to -- to try link him into.

21 Use your common sense. Use your common sense.

22 The Government came up here and gave, say, one day,
23 day and a half timeline where we used, I don't know, four or
24 five different timelines. Lynch time. All of these other
25 timelines. Quite confusing. Wasn't sure where to go with all

1 that. I also put a timeline together and I played it and I'll
2 play it again for you.

3 If we can have video Number 2, Bryan.

4 (Exhibit published.)

5 I want to point out a couple things about that video
6 that I saw interesting. First of all, the prayer -- the prayer
7 itself. The prayer itself. They said, "So many fight for and
8 die for, we will not forget them, ever, in our lives. We will
9 teach them to our children."

10 Are they there to gather cows? Is that what that's
11 about? Is that a prayer for cows? It seems like a little bit
12 deeper than that.

13 Also, I wanted you to recognize that at that moment
14 in time, when Mr. Lynch went out into the middle and he asked
15 the BLM if they're going to shoot or they can't hear him, you
16 didn't see anybody on the bridge, you can't see anybody in camo
17 underneath. You didn't see any of those people that they kept
18 showing you were at the rally with the patches and the badges
19 and all those camo people. You didn't see anyone there. Those
20 people went to go get the cows that they thought they were
21 going to go get.

22 It's logic. It's common sense. It's what makes
23 sense right now, at this point, at this point on the 12th.

24 Now, I know that a number of my colleagues have
25 talked to you about threats and how the BLM felt threatened,

1 felt intimidated. Mr. Tanasi did a great job when he showed
2 you sort of what the reports were three years ago, closer in
3 time, what they mention, what they said versus how they -- how
4 they testified. Big difference.

5 If we could have -- I want to -- I want to show you a
6 video on threats. If we could have Video No. 3.

7 (Exhibit published.)

8 Many of them came in and gave you 7s, 8s, 9s, 10s on
9 a scale of threats. Does that resonate with what you just saw?
10 The laughter. They call it black humor. A stress reliever.
11 Does that make any sense at all, that this is how you relieve
12 stress by making fun of people?

13 Stressful moments don't bring out that reaction,
14 ladies and gentlemen. It's more in line with the attitude of
15 the BLM on that day, and the days leading up to that day, that
16 bravado that they had.

17 MR. MYHRE: Objection, Your Honor. No -- stating
18 facts not in evidence. Bravado?

19 THE COURT: It's up to the jury to decide if they
20 interpret what they see as bravado or not.

21 MR. LEVENTHAL: Does that give you doubt? Does that
22 give you doubt? And is it reasonable?

23 Now, some of the evidence -- some of the evidence
24 that the Government brought to you to prove their case beyond a
25 reasonable doubt, over the last two months, I'm going to go

1 through some of it.

2 They talked a lot about clothing. They talked about
3 camo. They asked witnesses if this person's ready for war.
4 They showed patches of people in camo. Is this person ready
5 for war? They showed this picture to Shannon Bushman.

6 (Exhibit published.)

7 They showed that picture to Shannon Bushman and they
8 asked, "Mr. Bushman, is that man ready for war?" and
9 Mr. Bushman responded, "If he is, he's really bad at it."
10 That's what he said. "He's really bad at it." What? Why?
11 He's got a hat. He's got a t-shirt, and guess what, his hat's
12 not backwards either

13 Does that give you doubt about Mr. Drexler? And is
14 it reasonable?

15 They spent a day on a dot program or a -- sort of a
16 putting together where guns were, a whole day of that. We saw
17 images where all the months were. Two months and that was the
18 finality -- the finality of it. The Hail Mary goes up; the
19 dots come down.

20 I don't represent a crowd, ladies and gentlemen. I
21 don't represent a dot, ladies and gentlemen. I represent
22 Mr. Drexler. What they've tried to do is take this thing wide.
23 And I understand, because they can't get it narrow, but I don't
24 represent a crowd. So as -- as many dots are out there, it's
25 not up to me. I represent one man, Mr. Drexler. That's it.

1 And you're going to have a jury instruction that indicates
2 that, that each of these individuals here, behind me, are
3 individuals and should be treated as such. Do not allow them
4 to lump them into the Bundys, the militia, if that's not where
5 they're at. If they're not a militia, then say it, he's not
6 guilty, he didn't join a conspiracy. He's not a Bundy, then
7 say it, he didn't join a conspiracy. They want the Bundys,
8 they want the militias, they should be here.

9 Does that give you doubt and is it reasonable?

10 They brought you hats. Remember? Tan hat, black
11 hat, tan hat. They never identified anybody black hat, tan
12 hat. There's hundreds of people on the bridge. It's very far
13 away. Perception/deception. They would sit a hundred yards
14 away, 200 yards away and the Government would show them a
15 picture 20 feet away. "Is that what you saw?" "Yes, that's
16 what I saw." No. It's impossible. Perception/deception.
17 It's impossible.

18 I know you remember this little black hat, tan hat.

19 (Exhibit published.)

20 They showed the witness black hat (indicating), tan
21 hat (indicating). Well, we've got a black hat here
22 (indicating). We've got a tan hat here (indicating), a black
23 hat here (indicating), a tan hat here (indicating).

24 This black hat here (indicating), tan hat's getting
25 up. Black hat's getting up. Tan hat's looking differently.

1 Again, tan hat's getting up (indicating). Black
2 hat's getting back down. Tan hat is now moving past -- towards
3 more of the freeway zone why if you are down in this area, the
4 perception up here (indicating), going upwards, might be that
5 he's coming down; right? That might be the perception. A lot
6 of movement. Black hats. Tan hats. Never identified anybody,
7 black hats or tan hats

8 The point is this. In your jury instructions you're
9 going to have, under the assault and the threat that they're --
10 it's going to say -- let me just see if I have it --
11 circumstances unknown to the victim are not included.

12 The BLM, anybody who came in here and testified, did
13 not ID Mr. Drexler once.

14 The BLM could not have known what was going on behind
15 this barricade. It's an impossibility. They see people
16 getting up. They see people getting down. They're on their
17 megaphone saying black hat, tan hat. Well, guess what? Tan
18 hat is doing nothing but reporting. Getting up. Getting down.
19 Getting up. Getting down.

20 "Circumstances unknown to the victim are not
21 included."

22 Does that give you doubt? Does that give you doubt,
23 and is it reasonable?

24 Communications. You've never seen Mr. Drexler with
25 any communications, anything in his -- earpiece, anything

1 anywhere on his body. No communications whatsoever. They made
2 a big deal about all this stuff. Why? Because they're trying
3 to build a case. But it fails when it comes to Mr. Drexler.
4 No communications, doesn't look like he's ready for war, has no
5 attitude towards war, not on the stage, not in front of the
6 stage, not a Bundy, not in the militia, no proof he's
7 communicated with anybody.

8 Does that give you doubt and is it reasonable?

9 Let's talk about Scott Drexler himself.

10 We've been here for two months, maybe more, and I
11 think maybe it was two weeks ago, maybe three weeks ago his
12 name came up, finally. Finally his name came up and I think it
13 was through an FBI agent who did some research online and found
14 two pages of his Facebook page that may have had anything to do
15 with the Bundys at all; one of the pages had to do with
16 articles that were written by CNN and I think the Washington
17 post, but they have not found one iota, one shred of evidence,
18 or has not given it to you, in connection with any
19 communications, like I said, with Bundys, with Ryan Payne, or a
20 lot of the people that you've heard about, Santilli, people in
21 camo, militias. No phone records of any kind that he's been in
22 communication with anybody. The Government must prove it to
23 you. They have to give it to you to prove their case beyond a
24 reasonable doubt.

25 There was 875 FBI reports in this case. There's 642

1 BLM reports in this case.

2 MR. MYHRE: Objection. Arguing facts not in
3 evidence, Your Honor.

4 MR. LEVENTHAL: Your Honor -- Your Honor --

5 THE COURT: Sustained. There's been no testimony of
6 that.

7 MR. LEVENTHAL: There has. Agent Willis actually
8 indicated that that's how much he went through on direct exam.
9 I wrote it down. That's how much he went through and how much
10 he went through with video -- I believe it was Willis -- it was
11 one of the FBI agents who indicated that that's exactly what
12 they went through in order to come here today and how they
13 prepared themselves.

14 THE COURT: I'll leave it up to the jury to decide
15 what you recall and to use only the facts that you recall
16 having heard as testimony in this case.

17 MR. LEVENTHAL: He indicated there were over 18,500
18 documents, and he indicated there was over 170,000 pages of
19 documents within those pages, and there were thousands of hours
20 of video. And they decide -- Government decides, after all of
21 that, after all of that evidence, they decide to go undercover
22 again, and you're going to get a jury instruction that says
23 that that's what they can do, and they can do it. And when I
24 say "again," it wasn't the first time. We've heard evidence
25 that they went -- Robyn Kirkham went undercover, posed as a

1 militia, prior to the 12th, and got on the web, got on the
2 militia websites. We heard proof that they went to the rally.
3 As a matter of fact, this is an undercover BLM agent holding a
4 sign, smirking, saying "Dave Bundy, a political prisoner."

5 (Exhibit published.)

6 Not, where are the cows, or anything like that.
7 "Political prisoner."

8 The Court has talked to you about weight of evidence.
9 What do you weigh it? How much do you give it weight? If I
10 had sort of a bible here and a trash can here and you've got a
11 document, do you put it here (indicating)? Do you put it over
12 here (indicating)? The weight of the evidence. They've got
13 undercover FBI agents in the militia and we don't know what
14 they're saying. How much do we know is real and not real and
15 that goes to the weight and that's for you to decide how much
16 weight to give all this evidence.

17 But even after all that evidence they still need
18 Long Bow. They still need it. Even their own agent testified
19 that it was unusual to go in after the fact. He even testified
20 to that. He said, yeah, it was unusual. Usually we do it to
21 ferret out crime. Because usually what happens, usually what
22 happens is what he meant by that is, you know, when they go
23 undercover, then they bring them down and they Mirandize them.
24 They say, hey, you've got a right to remain silent. If you
25 want to give up that right, you can. You have the right to an

1 attorney. You know your *Miranda* rights. They didn't give
2 these guys that right, did they? They went undercover on a
3 documentary because they didn't have enough evidence. And they
4 created that deception. They created that deception using
5 probably -- at least we know six FBI agents that ran around the
6 United States with video cameras, lightings, vans, alcohol.
7 Alcohol? Is that logical? Does that make sense?

8 And they use a deceptive name. They don't say *When*
9 *the Cows are Coming Home*, our documentary is going to be called
10 *When the Cows Come Home*. No. The deception continues when
11 they say we're going to call it *America Reloaded*, boys. So
12 let's talk about guns. That's what they're looking for. They
13 want them to talk about their experiences and their guns and
14 Mr. Marchese, he said it the best, they put words in their
15 mouths. They -- they -- they would -- he would suggest things
16 that weren't true, but even though he did this, my client still
17 sat down and interviewed, obviously not knowing. But I guess
18 the real question of it is, is that the Government conceding
19 the fact that even after all the evidence in this case that
20 they had, all of the evidence in the case that they had, they
21 still had to go undercover because they needed more? Is that
22 the Government conceding? Why else would they spend the money?
23 Why else would FBI agents spend the time, spend the money, the
24 resources, to go get more? More. Because they didn't have
25 enough.

1 Does that give you doubt and is it reasonable?

2 Are they conceding just by that fact alone?

3 Well, they got Scott in his little net and they
4 played a video -- the video for you and I'm going to play it
5 again for you, just a portion of it. You'll have it to see.

6 If, Bryan, you can play video Number 4.

7 (Exhibit published.)

8 Couple things about that video I wanted to highlight
9 for you. First he said he went to help. Protest. Support.
10 Help.

11 Next he said government overreach. What he didn't
12 say was cows. I'm going to go get cows. He never cared about
13 cows. I don't think many people did except the Bundys, to be
14 honest with you. Everybody had their own, sort of, reasons for
15 being there. I told you there were three, probably, groups;
16 Bundys. Militias had their reasons. He went for his reasons.
17 And they were noble reasons. They were reasons that we all
18 care about.

19 He said the impoundment was over. They went to go
20 watch the cows go underneath the bridge and I think the most
21 important thing that you just heard Mr. Drexler say that when
22 he got to the bridge, they were laughing, joking, and just
23 hanging around.

24 Sound like a guy ready to go to war? Laughing,
25 joking, and hanging around, just going down to see what was

1 going on.

2 And then he heard they were pointing guns at
3 civilians.

4 Does that give you doubt and is it reasonable?

5 Now, you're going to get -- you also -- well, you
6 have this, but Jury Instruction No. 3 says, "A reasonable doubt
7 is doubt based on reason and common sense and is not
8 merely based on speculation. It may arise from a careful and
9 impartial consideration of all the evidence, or from lack of
10 evidence."

11 What does that mean?

12 You can, in your evaluation on whether or not the
13 Government has met its high burden, decide whether a lack of
14 evidence -- what they didn't bring you -- is also reasonable.

15 What haven't they brought you?

16 Well, first of all, they didn't bring you SAC Love.
17 Special agent in command. He could have come in here and
18 explained his orders. We've got a lot of blurriness as to when
19 the cows -- when the -- the whole thing was over with; right?
20 When was the -- when was the operation ceasing? Sheriff said
21 it was ceasing. There was a news press release the 11th that
22 it was ceasing. This is all important stuff. Why? Because
23 you can't impede or obstruct something that which is over. So
24 if it was over, then it's impossible to impede something that's
25 done. It's impossible to extort something that's over. It's

1 impossible to impede, obstruct, or do anything if it's done.
2 Wouldn't it be nice to have heard from SAC Love? He could have
3 explained those things. He could have told you what the
4 conversations he had or when things were done.

5 His threat level. We heard from a lot of BLM agents.
6 What about the SAC? He's the one who walked up to the gate.
7 It would have been nice to hear from him on that.

8 How about the events before the 12th, the things that
9 I showed you on the videos that you saw? What about those?
10 Could have explained that to you. But it's their burden. They
11 chose not to bring him in.

12 How about Sheriff Gillespie? Again, their burden.
13 They chose not to bring him in.

14 He could have answered a lot of questions for us
15 today. My client is sitting here facing these charges. The
16 Government has the burden. We really don't know what he meant
17 when he got up on the stage; right? It's all very confusing.
18 Could have sat there and told you exactly what he meant, what
19 he said.

20 He could have also talked about the timing of ceasing
21 operations. He could have talked about why, and if Metro was
22 even out there before the 12th.

23 A lot of -- a lot of questions went unanswered
24 without those two, the two heads; heads of Metro, heads of the
25 BLM. Neither of them came in for you. You can consider that,

1 whether they've proved beyond a reasonable doubt their case.

2 You know, I disagree with Mr. Dickinson yesterday
3 when he said it's a simple case. I think it's just the
4 opposite. I think it's a much more complex case than that.

5 And why I say that is because of this statement from
6 Brian Sandoval. "Due to the roundup by the BLM, my office has
7 received numerous complaints of BLM misconduct, road closures,
8 and other disturbances. I have recently met with state
9 legislators, county officials, and concerned citizens to listen
10 to their concerns. I expressed those concerns directly to BLM.
11 Most disturbing to me is the BLM's establishment of a First
12 Amendment area that tramples upon Nevadans' fundamental rights
13 under the U.S. Constitution. To that end, I have advised the
14 BLM that such conduct is offensive to me and countless others
15 and that the First Amendment area should be dismantled
16 immediately. No cow justifies the atmosphere of intimidation
17 which currently exists or the limitation of constitutional
18 rights that are sacred to all Nevadans. The BLM needs to
19 reconsider its approach to this matter and act accordingly."

20 I think it's a much more complex case than that.
21 It's not that simple when we've got politicians issuing
22 statements.

23 Now, Mr. Myhre is going to have a chance -- or
24 someone for the Government, because they have the burden -- so
25 they have a chance to come back and talk to you. This will be

1 my last chance to talk to you. And he's going to hammer and
2 hammer away that Mr. Drexler conspired and intimidated and
3 threatened. And I want you to think when he's talking, I want
4 you to think about it. Prior to the 12th, the BLM had over 80
5 law enforcement officers and you've seen the videos. You saw
6 videos of an arrest. You saw an elderly woman taken down to
7 the ground like a rag doll. You saw protesters getting Tased.
8 You saw lethal weapons out there. What you didn't see were
9 protestors with guns. You saw what was perceived as snipers.
10 Then you saw, on the 12th -- we've seen a lot of things. You
11 saw aerial footage of a mesa that the people, protestors
12 perceived as snipers. Drones. Militarized men pointing guns
13 at unarmed civilians while no one was on the bridge. Think
14 about all that while Mr. Myhre, or whoever from the Government,
15 is talking to you.

16 Also remember that Mr. Drexler went to help. To
17 protest. There's no proof to the contrary. It won't be
18 produced because it's not there. It hasn't been there.

19 What Mr. Drexler heard and understood was logical and
20 reasonable given all of the circumstances surrounding the
21 rally. He went there like hundreds of people. He also went to
22 go see the cows, like a lot of people, come home, that he
23 thought was happening.

24 He heard "lethal force."

25 Ladies and gentlemen, there's overwhelming doubt,

1 overwhelming doubt in this case on the guilt of Mr. Drexler.
2 Overwhelming.

3 I want you to ask yourself, does a court order, does
4 a court order to gather cows give the BLM the right to
5 indiscriminately use assault rifles? German Shepherds? Does a
6 court order to gather cows allow them to do that? To attack
7 unarmed and -- intimidate people? Does a court order to gather
8 cows, does that give the right to the BLM to suppress our First
9 Amendment right to speech, protest, and be heard?

10 MR. MYHRE: Objection, Your Honor.

11 MR. LEVENTHAL: Does it?

12 MR. MYHRE: Objection, Your Honor. This is improper
13 argument. There are no facts in support of either using --

14 MR. LEVENTHAL: I'll move on.

15 THE COURT: It sounds like you're arguing a legal
16 defense that isn't included in the instructions provided to the
17 jury.

18 MR. LEVENTHAL: I'll move on. And I'm almost done.
19 I have just one more thing to say.

20 You know, my grandmother used to say, she said,
21 "Toddy, you know, if you don't stand for something, you'll fall
22 for anything." And I'm asking you, don't fall for it. Because
23 this is deception. It's perception/deception. Individualize
24 Mr. Drexler. Look at what he did or didn't do. He deserves
25 that. Don't fall for it.

1 Thank you.

2 THE COURT: All right. Well, we finished a little
3 earlier than I thought we would be, so let's go ahead and take
4 another 10-minute stretch break. You can use the restroom if
5 you need to or if not, just get your blood moving and then
6 we'll be back here . . . Try to be back here by 10:50.

7 So, remember not to discuss this case with anyone,
8 read, or listen to, or view anything that touches upon this
9 case in any way. Do not attempt to perform any research or any
10 independent investigation and do not form an opinion.

11 Stand for the jury, please.

12 (Jury excused from courtroom.)

13 THE COURT: Off record.

14 (Recess was taken at 10:35 a.m.)

15 (Outside the presence of the jury at 10:56 a.m.:)

16 COURTROOM ADMINISTRATOR: All rise.

17 THE COURT: Thank you. You may be seated.

18 All right. So the good news is, we've checked and
19 double-checked and triple-checked the juror system and it's
20 working perfectly. So all the videos have been loaded up onto
21 the system. It's a big screen TV. It's touch screen and the
22 jury will be able to view all of that so we won't need to come
23 back in here every time they want to watch a video. But as
24 always, any note that comes up from the jury, we'll let you
25 know immediately and then we'll convene.

1 All right. So, I think that was the last thing that
2 I needed to mention. No. There was one more thing.

3 So, Mr. Jackson, just to clarify on the record,
4 the -- it wasn't Agent Caputo who mentioned the seizure
5 epilepsy, but it was Johnson, the undercover Johnson.

6 MR. JACKSON: It -- I just knew it was mentioned. I
7 didn't say which agent mentioned it.

8 THE COURT: Yes.

9 MR. JACKSON: I just said it was mentioned and I
10 think Mr. Myhre's objection was improper because it definitely
11 was mentioned that the -- so, if I misstated the evidence, I
12 think his objection was improper.

13 THE COURT: All right. Well, the jury was instructed
14 that they're to permit -- they're to follow their memory and a
15 lot of them were taking notes. So, we'll -- we'll leave it at
16 that.

17 All right. So let's go ahead and call in the jury,
18 Aaron.

19 COURTROOM ADMINISTRATOR: Yes, Your Honor.

20 (Brief pause in proceedings.)

21 MR. JACKSON: Your Honor, would the Court consider
22 instructing the jury that it was in evidence? Because
23 Mr. Myhre made a --

24 THE COURT: No.

25 MR. JACKSON: No?

1 THE COURT: No. I can't make that -- I can't tell
2 them that.

3 (Discussion between the Court and clerk.)

4 MR. JACKSON: For the record, Your Honor, I think it
5 does distract from my credibility in front of the jury when --
6 if the Court -- unless the Court instructs the jury that a
7 search of the record shows that there was evidence that my
8 client did have a seizure disorder that was brought up.

9 MR. MYHRE: Your Honor, there was -- my recollection
10 of the testimony, I thought it was Caputo, but if it was
11 Johnson, I remember the question being asked of the agent and
12 the agent said no, he was unaware of that. He said -- and it
13 was asked and -- as did you know my client had epilepsy or had
14 an epileptic issue, or seizure issue, or something along that
15 line and the answer was no.

16 Now, with respect to the portions of the video that
17 were played, it was not before the jury that -- from the UCE
18 or -- excuse me -- from the undercover that Mr. Burleson had
19 any sort of medical issues. So it's not in evidence.

20 MR. JACKSON: I didn't ask anything about the videos.
21 I asked about my cross-examination. It was in evidence before
22 the jury and I think Mr. Myhre's objection was -- was wrong and
23 the Court did look it up and I think the jury should now be
24 instructed that it was there because it went directly to my
25 credibility in front of the jury. I -- I know the jury heard

1 it, but I'd still like the Court to so instruct the jury and
2 I'll leave it with that . . . because my credibility in front
3 of the jury, I think, is important to my client. I'm not
4 worried about my credibility, but it might affect my client's
5 chances in front of the jury and I'd like the Court to so
6 instruct them.

7 THE COURT: Okay. Looking at Page 25 of the rough
8 daily transcript of March 23rd, 2017:

9 "QUESTION: Okay. So you knew during the interview"
10 . . . okay. So -- not so.

11 "Okay. You knew during the interview Mr. Burleson
12 mentioned that he had a problem with epilepsy; is that
13 correct?"

14 "ANSWER: He -- yes."

15 "QUESTION: In fact, he had been rejected from the
16 military because he had epileptic seizures; is that right?"

17 "ANSWER: Yes."

18 MR. MYHRE: And that's with Johnson?

19 THE COURT: So if I had sustained the objection, I
20 would definitely tell them that I was incorrect, but I can't
21 tell them what they should . . . what they should do with
22 argument and whether or not -- you know that's -- that's --
23 that's up to -- Mr. Myhre, if you want to clear that up in your
24 argument, that might be a better way to do it, but I don't
25 think that I can give them an instruction about what the

1 evidence was. I left it up to their memory, which is what the
2 instruction says is the best way to handle it.

3 MR. MYHRE: Well . . . I wasn't going to, in the
4 focus of my argument, go into that aspect of it. So I'm not --
5 I'm not quite clear what the Court is asking.

6 THE COURT: You don't have to. I'm just saying I'm
7 not going to -- I'm not going to instruct the jury as to what
8 they should remember or not remember from testimony.

9 All right. So let's go ahead and bring in the jury.

10 Then I'm assuming you'll be done before the lunch
11 break, and you can go into 12:30 if you need to, but, after
12 that, we'll swear in the CSO for deliberation, because it's a
13 different set of circumstances, and then I will instruct the
14 jury on the record that they need to let the CSO know how long
15 they're going to be staying until, you know, when they're
16 leaving today and what time they plan to be back, whether they
17 plan to be back tomorrow or not until Monday, so that way
18 everybody can be aware of whether you need to be in your suit
19 tomorrow and ready to come back for any notes or whether you
20 can finally start working on the other cases that you all have
21 to work on.

22 MR. LEVENTHAL: Your Honor, did -- I apologize. Did
23 I hear from you correctly that they're going to be able to
24 review the video back there and we're not going to have to come
25 back to court then?

1 THE COURT: Right. So we won't have to come back.

2 MR. LEVENTHAL: Perfect.

3 THE COURT: They can watch everything on there. It's
4 a huge big screen, touch screen, and it's working fine. The
5 only problem we kept on having is that we can't record here in
6 the courtroom and send it there, but because you all had
7 everything on DVDs and other things we were able to get
8 everything downloaded and put into the computer there. So they
9 have it.

10 MR. LEVENTHAL: Okay. Very good. Thank you.

11 (Brief pause in proceedings.)

12 COURTROOM ADMINISTRATOR: All rise.

13 (Jury returned to courtroom at 11:05 a.m.)

14 THE COURT: All right. Everyone may be seated.

15 We're joined by the jury, we're back on the record,
16 and Mr. Myhre will now provide rebuttal on behalf of the
17 Government.

18 MR. MYHRE: Thank you, Your Honor.

19 Good morning, ladies and gentlemen.

20 At the very outset of this case, when I stood before
21 you in opening statement, more than two months ago now, I
22 stated that this was a simple case, that there would be a lot
23 of evidence, granted, and that some of it would be, from time
24 to time, rather tedious, but it was something that we would
25 have to plow through, that it was important, but that at its

1 base, the case really boils down to this:

2 What these six men were doing back in April -- on
3 April 12th, 2014. What they were doing on that bridge and what
4 they were doing in the wash. And this case is still about
5 that, and only about that. The charges before you that you
6 will be deliberating upon very shortly all stem from what these
7 six defendants did on the 12th of April, 2014, more than three
8 years ago now, today.

9 My purpose in standing before you now is not to
10 recount for you all the evidence that's been presented.
11 Mr. Dickinson did that for you yesterday and we tried to
12 summarize for you the salient pieces of evidence that go to
13 prove the elements of the offense. And you will have, when you
14 deliberate, all of the evidence and -- and obviously we commend
15 that to your attention. You've been very attentive throughout
16 these proceedings and we thank you for that. And you will rely
17 upon your memory as to what the witnesses said, what the
18 evidence was, and you will have before you the exhibits,
19 including the videos and so forth, to watch and to review.

20 My purpose now, however, is to address some of the
21 issues that were raised during the course of the closing
22 statements of the defendants. And then, finally, to close the
23 case and then turn it over to you.

24 So, to summarize what we've heard for the last, you
25 know, last -- latter part of yesterday and today, I see sort of

1 several issues that all the defendants have raised. They
2 coalesce around a number of issues, about 10 of them that I've
3 counted.

4 One is, is that, you know, there's no conspiracy
5 because my guy didn't know the other guys and everybody else
6 out there.

7 Another sort of theory or defense issue is no one saw
8 my guy pointing a weapon. Therefore, you can't find my guy
9 guilty because no agent, officer, ranger came in here and said,
10 oh, yeah, that's the one I remember.

11 Another issue, the victims didn't feel fear. In
12 fact, they were cavalier about it down there in the wash,
13 making jokes, saying things.

14 Long Bow put words in my mouth. That was a deceptive
15 action. You can't believe what you see on the videos about
16 Long Bow because there's something nefarious about that.

17 Another issue, oh, there's some ambiguity here.
18 We're not really sure whether BLM was leaving and whether they
19 were still there and whether they're coming back.

20 Another issue, 4-6. April 6th, April 9th, the
21 Dave Bundy arrest, the Tasing of Ammon Bundy has something to
22 do with this case, but we really can't tell you what, but it's
23 something.

24 And also out there there's First Amendment zones and
25 something called government overreach and that is somehow

1 relevant to this case.

2 Another issue is, oh, there was a great deal of
3 confusion. Everybody was so confused. There was so much chaos
4 out there on the 12th of April. You cannot possibly discern
5 what their intent was, what they were doing because everything
6 was confusing.

7 Another issue. Oh, we were just protesting. I'm a
8 peacemaker. I'm helping. I'm trying to prevent violence.

9 Another issue. Timeline's off. No one's on the
10 bridge at the time that this is going on.

11 Can't impede, can't obstruct because there was,
12 again, some sort of issue about whether BLM should have been
13 there or not.

14 And then, of course, the Government didn't call
15 Dan Love, didn't call Sheriff Gillespie, and Governor Sandoval,
16 and, you know, any other number of witnesses who have been
17 mentioned throughout the course of the trial.

18 So I'd like to address some of these issues, first of
19 all, to tell you why they're not issues, why they do nothing in
20 terms of raising reasonable doubt or presenting a defense in
21 this case or a justification in this case. And after I address
22 those issues, then I would like to address individually some of
23 the things that some of the individual defendants raised.

24 So, it's important to go back to what the
25 Government's theory of this case is and what we explained early

1 on and how -- what the charges are in this case. This case is
2 a conspiracy case, as we've explained. And the conspiracy
3 arose when Cliven Bundy and his family members began
4 interfering with the BLM's impoundment operation. And the
5 evidence we've shown you through the Facebook accounts that we
6 have, through Long Bow interviews shows that each of these
7 defendants, at some point, learned about Cliven Bundy's
8 interference. Now, whether it was in the form of watching the
9 video about what was going on there or hearing, you know, three
10 levels down what was going on in Bunkerville, there was --
11 there was the word put out, a call to arms put out, somewhere
12 around the 8th and 9th of April, through Ryan Payne, through
13 OMA, that Cliven Bundy needed protection. Calling for militia.
14 Calling for people to come down to "protect." And that's what
15 started the sequence of events that brought people down to
16 Bunkerville.

17 So whatever the reasons, individually, these
18 gentlemen had for coming down, the evidence clearly shows it
19 was to come to Bunkerville to assist Cliven Bundy. Now they
20 may -- when they took off in their cars and trucks and drove,
21 you know, 10, 12 hours or however many miles it took to get to
22 Bunkerville, they may not have known precisely at that point in
23 time they'd be standing on a bridge on April the 12th. They
24 may not have known precisely they'd be in the wash on April the
25 12th, or that they'd be confronting BLM in the wash on April

1 the 12th, but they knew that they were here to support
2 Cliven Bundy. And what was Cliven Bundy and his family up to?
3 They were trying to disrupt, interfere, impede a lawful
4 impoundment operation that had been court-ordered.

5 And you heard Agent Stover's testimony about -- and
6 we went through this yesterday -- about how, after the 6th --
7 excuse me -- as early as the end of March, when Cliven Bundy
8 and his family members tried to block the first convoys coming
9 in in order to set up the ICP, all way up through the 9th,
10 there were various points of interference. And after each
11 point of interference, the rhetoric, the Internet chatter
12 ratcheted up and more and more people started coming to
13 Bunkerville so that by the time of the 11th, the numbers had
14 gotten so great and the potential for violent intention had
15 become so palpable, that the BLM decided that they were going
16 to cease operations. Not move the -- not release the cattle.
17 Not, you know, just run away from the ICP; they were going to
18 cease operations and then plan going forward as to how they
19 were going to get the cattle out of there, how they were going
20 to get their equipment out of there and so forth. So that is
21 where matters stood on April -- on the morning of April the
22 12th.

23 So addressing this issue of ambiguity, there is no
24 evidence to show that there was any ambiguity, that there was
25 some -- some sort of confusion as to what BLM was doing, why

1 they were doing it, or where they were supposed to be. The --
2 all the evidence shows that it was because of the potential for
3 violence that BLM decided to cease operations. And it came to
4 the point where the sheriff went out to Bunkerville and he made
5 his announcement that he was going to keep an emotional issue
6 safe.

7 So whatever these defendants now say, three years
8 later, that they heard or thought they heard, or what
9 potentially they thought was going to happen, it's clear that
10 when the sheriff gets there, on April the 12th, in the morning,
11 he says, "I'm here to keep an emotional issue safe." And, you
12 know, everybody -- the crowd sort of died down and so forth.
13 And Eric Parker had stated in his interview that, you know, oh,
14 what we came for, just -- you know, just dissolved, just went
15 away.

16 So, after then the sheriff has his interchange with
17 Cliven Bundy where he tells him to go, you know, disarm the BLM
18 and so forth, after that hour passes, and the sheriff doesn't
19 come back, Cliven Bundy gives his speech to say go get the
20 cattle. And everybody takes off and heads to the I-15 area and
21 to the ICP. And when they get there, they see Metro, in the
22 skirmish line, and they see all these people with guns. And at
23 that point, ladies and gentlemen, there can be no ambiguity.
24 No matter what the issue is with respect to, you know, what
25 they say now that they thought, clearly when they went up

1 there, after Cliven Bundy said get the cattle, whether they
2 thought he said the cattle are gone or release the cattle or
3 whatever, when they get there, they know the cattle are there
4 because Metro is there.

5 MR. LEVENTHAL: Objection, Your Honor. There's no
6 proof. Facts not in evidence as to Mr. Drexler.

7 MR. MARCHESE: Parker joins.

8 MR. TANASI: Stewart joins.

9 MR. PEREZ: Lovelien joins.

10 MR. JACKSON: Burleson joins.

11 MR. MYHRE: It's a fair comment on the evidence,
12 Your Honor, arguing inferences.

13 THE COURT: Overruled. He can argue inferences.

14 MR. MYHRE: There's no doubt, ladies and gentlemen,
15 these defendants are on that bridge or they're in that area on
16 the morning of April the 12th. We've established --

17 MR. JACKSON: I'm going to object as to my client.
18 He said he was not on the bridge. There's no evidence of that.
19 When he says "these defendants," he -- he should separate
20 defendants from whose is and who isn't.

21 MR. MYHRE: Well, Burleson is in the wash and the
22 other defendants are on the bridge.

23 My point is, is that with respect to those who say
24 that there was some issue, some ambiguity, the ambiguity is
25 over and -- at all events, once they're up there. Each one of

1 these defendants -- with respect to Mr. Burleson, Mr. Burleson
2 clearly knows that the cattle are there. We heard in his UCE
3 interview --

4 MR. JACKSON: I'm going to object to him making
5 assumptions of --

6 MR. MYHRE: We heard --

7 MR. JACKSON: -- his personal opinion. The
8 prosecutor is not allowed to state his personal opinion. He
9 can state evidence.

10 THE COURT: Mr. Jackson, the prosecutor is allowed.
11 All the parties are allowed to ask the jury to draw proper
12 inferences from the facts and apply them to the law.

13 The objection's overruled.

14 MR. MYHRE: In his undercover interview, Mr. Burleson
15 clearly says, when he's down in the wash and he's moving,
16 making his flanking movement, he says, We boxed them in. We
17 boxed them in. We knew we had them boxed in. We had them
18 up -- we had people up on the skirt, on the southbound, on the
19 west side, and the east side -- or the west side and the east
20 side and BLM had no choice but to back down so that we could
21 get Mr. Bundy's cattle. That's what he says. So he knew.
22 There was no doubt in his mind about that.

23 There was no doubt, there was no confusion, there was
24 no ambiguity in the mind of Ammon Bundy. We saw the video that
25 Mr. Lynch took with Ammon Bundy moving from the staging area up

1 to the ICP where Ammon Bundy -- when he's -- when Lynch asks
2 him, Well, what are you -- what are we going to do? We're
3 going to get our cattle. We're going to get the cattle.
4 That's what Ammon said.

5 There was no confusion from Dave Bundy. We heard
6 testimony from Sheriff Lombardo that he saw -- when he walked
7 across the interstate highway to meet -- to try to find someone
8 to negotiate with, he met with Dave Bundy. Dave Bundy said --
9 or Sheriff Gillespie asked, Well, what's your intentions?
10 Dave Bundy said, Give me the cattle. We want the cattle.
11 You've got an hour. Sheriff Lombardo said, We need more time
12 than that, but Dave Bundy said, you got an hour.

13 There was no ambiguity from Ryan Bundy. Ryan Bundy
14 was up there and met with Sergeant Jenkins.

15 So, the only people who appear to be confused are the
16 defendants, now, when they raise these issues. But the facts,
17 the circumstances show there was no confusion.

18 And certainly by the time these defendants are on the
19 bridge and they see the skirmish line lined up in the -- in the
20 middle of the wash, you could hear -- clearly hear, "Open the
21 gate." "Open the gate." "Give us the cattle." "Give us the
22 cattle." That was what was being shouted there. So, to the
23 extent that this is at all an issue -- and we contend it's
24 not -- they knew, ladies and gentlemen, back at the staging
25 area precisely what the sheriff said. It's very clear. They

1 know precisely what Cliven Bundy said. But if, to the extent
2 that this is at all an issue, which it shouldn't be, it
3 certainly was cleared up for them by the time they got on the
4 positions in the wash and on the bridge.

5 And we also have defendant Engel's Facebook posting,
6 "Going to shut down the freeway by force of arms," that he
7 posted at 11:17.

8 So they knew. Certainly Engel was not confused as to
9 what the purpose was for going up there or what Cliven Bundy
10 had sent them for.

11 I want to address the issue also of 4-6 and 4-9.
12 Mr. Leventhal and others have raised this issue as to whether
13 this is . . . somehow brought people here, or whether this was
14 an example of federal overreach, if you will.

15 There is no evidence, ladies and gentlemen, none,
16 none has been presented in this trial that there was any
17 misconduct on the part of any BLM officers on either the 6th or
18 the 9th. There is no evidence here that First Amendment --
19 First Amendment zones were somehow improper. Agent Stover
20 talked about all that. He explained the reasons for the First
21 Amendment zones and Mr. Dickinson touched on it yesterday.

22 If the theory from the defense is, is that they came
23 down on this -- because of something that occurred that they
24 saw on the Internet on the 6th or the 9th, that doesn't make
25 them noble, as I think Mr. Leventhal had characterized it; it

1 makes them into vigilantes. It makes them into people who are
2 taking the law into their own hands.

3 Recall, they came down with guns, with tactical vests
4 and plates, and ammunition. And if they are coming for the
5 purposes of revenge, then that makes them vigilantes. And as
6 you see in the instructions -- with the jury instructions --
7 excuse me -- that "To 'retaliate' means to return for like, to
8 act in reprisal, or to act for some past act," and that's in
9 connection with threat to a federal officer and I'll be going
10 into that in a greater detail in a few moments.

11 The issue with respect to Long Bow, that somehow
12 Long Bow -- you can't believe what's on the Long Bow videos
13 because somehow this was an operation that was deceitful or was
14 designed to trick. Well, you've seen all of the videos and
15 you'll have the video back there again. Yes, it's true that
16 the undercover agent said we were a documentary film producers
17 when they weren't, but as the Court has instructed and as
18 you'll see when you read the instruction, the Government may,
19 in order to undercover criminal activity or develop evidence of
20 criminal activity, use deceit and deception for that purpose.
21 But here, when you think about it, the fact that the agents
22 were not, in fact, film producers, really would have had no
23 impact whatsoever on the statements or the admissions that were
24 made by these defendants. They were told, and you heard from
25 Agent Johnson, they were told that, Hey, here's your chance to

1 tell your story. And we've seen evidence how, after this
2 event, the various defendants glorified what they were doing in
3 their Facebook postings and elsewhere. And so, this was their
4 chance. They were told this was going to be a documentary that
5 would have been published, circulated to the public. So they
6 knew, when they went in there, that what they said was likely
7 to be put out into the public domain, for anyone to view,
8 including law enforcement. So there's nothing about the fact
9 that these are law enforcement officers that would have changed
10 or altered what they said because what they said they already
11 thought was going to be going out to the public. They are
12 boasting. They are bragging. They are trying to muster more
13 and more support for what they view as their cause. They saw
14 this as a means to that end. So there's -- there was nothing
15 there that they -- excuse me -- they were going to accomplish
16 what they wanted to by trying to get their -- their words out
17 into the public.

18 Now, with respect to the alcohol and so forth, you
19 have -- you will see the demeanor of all of the defendants, and
20 you've seen it when we played those videos. There is nothing
21 that suggests that any of them were impaired or otherwise
22 confused.

23 And in terms of the questioning, I think it was
24 Mr. Jackson who referred to it as interrogation. Well, all of
25 the questions were softball questions, and the questions, when

1 you listen to it, remember, Agent Johnson prefaced always, he
2 said, Don't let me put words in your mouth. You know, I may
3 challenge you on some things, but this is your story. I want
4 you to tell your story. And, in fact, Agent Johnson didn't
5 have much background at all. He wasn't involved in the
6 investigation. He wasn't a case agent on the investigation.
7 This was an after-the-fact investigation. He was just asking
8 the questions. Granted, he was gathering information, but it's
9 not like he was questioning him, Now, where were you on the
10 12th of April at 11:15? Did you talk to Drexler? Did you talk
11 to Burleson? Did you talk -- no. Tell me, what did you bring
12 with you? How long were you planning to stay? Why were you
13 going down there? Those were the types of questions. Hardly
14 interrogation questions. Open-ended interrogations.

15 Mr. Leventhal seemed to make a big issue out of the,
16 well, you know, the Government has done this huge
17 investigation; why are they doing this operation? It's the
18 Government's obligation, ladies and gentlemen, to do all it can
19 to ferret out and to gather the evidence in the case, and this
20 is an investigative tool that's available. It's a lawful tool.
21 It's a tool that the law recognizes and it's a tool in this
22 case that was very effective.

23 So, Mr. Leventhal wants the -- to fault the
24 Government for being thorough in the investigation and then
25 fault the Government for not calling Sheriff Gillespie. You

1 can't have it both ways.

2 Now, with respect to calling Sheriff Gillespie and
3 Dan Love, Mr. Leventhal said, well, you know, we would have
4 liked to have heard from Love because he could have told us
5 about when the operation was ending and Sheriff Gillespie about
6 what he said. Ladies and gentlemen, you have what Sheriff
7 Gillespie said. There's nothing more that could be added or
8 subtracted from that. And with respect to Agent Love, we have
9 the video of what Agent Love said and did on the 12th, the
10 Lynch video. You saw him in the wash.

11 We brought or we presented to you the witnesses who
12 were the decision-makers out there, with Sheriff Lombardo, who
13 had to make the ultimate decision based on him -- his
14 assessment of the overall situation, the security situation,
15 and we brought you the witnesses who experienced the fear, who
16 saw the guns, who could point to where the gunmen were. Those
17 are the witnesses that we brought and presented to you.

18 Now, with respect to Governor Sandoval's statement,
19 that statement was from the 8th of April, 2014. And again,
20 that's four days before the events that are before you
21 happened. It addresses the First Amendment zones, which were
22 gone by that time, were not in use. But again, there was
23 nothing unlawful about the First Amendment zones.

24 These are distractions, ladies and gentlemen. These
25 are issues and things that are designed to take your eye off of

1 what is really going on here. Governor Sandoval is not
2 involved in this trial. He has a right to say what he said,
3 but it has nothing to do with what they did.

4 Another issue was that if the impoundment action was
5 over, you can't impede, and this goes to the various -- the
6 court orders in this case.

7 Mr. Petri testified during this trial and he
8 explained what the court orders said and that there was
9 something called a permanent injunction that permanently
10 enjoined or permanently required Mr. Bundy from ever putting
11 his cattle out on the federal public lands. The court orders
12 themselves not only affirmed that injunction, or prohibited him
13 from ever trespassing on the land, but it also orders that
14 Bundy shall remove his stock from the -- from the trespassed
15 lands within 45 days and that the United States is entitled to
16 seize and remove to impound any of Bundy's cattle that remain
17 in trespass after 45 days thereafter. Seize and remove.
18 Remove the cattle.

19 Those cattle were put back out on the land. That's
20 obstructing the justice -- that's obstructing justice. That's
21 obstructing the court order. That's impeding the law
22 enforcement officers from accomplishing their job, which was to
23 remove the cattle. It makes no sense to say, well, if we
24 put -- if BLM says they're not gathering any longer, then they
25 possibly cannot be impeded, when their mission, their job, was

1 to remove the cattle. They could not complete that job because
2 of the events of April 12, and the cattle went back out on the
3 land.

4 I think Mr. Tanasi had -- there was an issue by
5 Mr. Tanasi raised yesterday with respect to the court orders
6 saying that, well, you know, yes, Steven Stewart, he didn't
7 know about the court orders because, you know, the reference to
8 his Facebook page is with regard to Judge George, but
9 Judge Hicks signed the order so therefore he couldn't possibly
10 have been researching the court orders that applied. Well,
11 ladies and gentlemen, as you know from the evidence, there are
12 two court orders; one that was signed by Judge Hicks and the
13 second one, that I've just read from, which is Exhibit 5, which
14 applies to the new trespass lands, was signed by Judge George.
15 So, the Stewart Facebook posting most certainly shows knowledge
16 of the court orders, research into the court orders.

17 And just to refresh your recollection on the court
18 orders, remember, the first court order applied to what they
19 called the Bunkerville allotment or the old trespass lands and
20 the second court order, the one signed by Judge George, applied
21 to the Lake Mead National Recreation Area, where the cattle had
22 spread to.

23 Now I'd like to address the timeline. And I want to
24 talk about it, first of all, in the context of Mr. Leventhal's
25 argument that by the time that the BLM was pointing weapons

1 before anybody ever got onto the bridge. That's just not borne
2 out by the timeline, ladies and gentlemen. It's not borne out
3 in a couple of ways.

4 Parker and Engel are on the bridge at 11:53. We know
5 that from the Flynn video at Exhibit 76. That's the one where
6 the individual is shouting, "Your court orders don't mean
7 anything." Remember how we showed that to you yesterday?

8 As you recall from Exhibit 76, when he pans down to
9 the wash, you see Dennis Michael Lynch, the man in the blue
10 shirt with the camera, up at the front gate. So, we know that
11 there are people on the bridge when Lynch is at that gate.

12 So, when -- not only are there people on the bridge
13 because we see people, we know specifically Engel and Parker
14 are on the bridge.

15 Mr. Leventhal showed you the picture of the stack,
16 where the -- then the Park Service officers come out alongside
17 the truck and they stack in a position to prevent any entry
18 over that gate or through that gate. That stack doesn't occur
19 until 11:58, five minutes after Parker and Engel are on that
20 bridge that we know from the video footage.

21 The stack doesn't come out until those horses push
22 through. The horses push through the gate at 11:57 and they
23 take up that position in the middle of the wash around 11:58.
24 That's when the stack comes out. So to the extent
25 Mr. Leventhal's arguing that, oh, well, we can show people were

1 pointing guns before that, that just doesn't -- just does not
2 comport with the evidence.

3 And you will have Exhibit 457 with you back there,
4 and I'm going to cover it in a little bit more detail a little
5 bit later, but 457 -- and we went through it, took us a couple
6 of days to get through it as, I'm sure, you recall -- that
7 provides the road map for you through all the video evidence
8 that you have from the Lynch and the Ellis/Flynn video as well
9 as Shilaikis and the other photographic evidence that was taken
10 out there. This provides the road map, synchronizes the times,
11 shows you the sequence of events of where these defendants were
12 at various times throughout those events down in the wash.

13 But regardless of whether the BLM was raising weapons
14 or not before, you know, 11:58, we know that down in the prayer
15 circle area there was already a gun. We showed the individual
16 with the -- with the long gun with the German Shepherd. And
17 the fact of the matter is, ladies and gentlemen, is that law
18 enforcement officers have a right to protect themselves, have a
19 right to protect the area that they're -- they're charged with
20 securing and raising a weapon, when someone else has a weapon,
21 after they're told to disperse, and leave, there's nothing
22 wrong with that. And the -- and throughout the sequence, we've
23 shown you, repeatedly, through the -- through the Greg Johnson
24 video, through the Sones video, how these officers were
25 constantly telling the crowd, Back away. Disperse. We see you

1 have guns. Back up. You're in violation of a court order.
2 And what they see in front of them is a crowd that continues to
3 gather and eventually pushes out into the wash toward their
4 position.

5 But in any event, Your Honor -- or -- excuse me --
6 ladies and gentlemen, in any event, the first evidence we have
7 of the stack at is 11:58 when it -- when it -- when the
8 horse -- the skirmish line forms.

9 Now I'd like to talk a little bit about the issue of
10 "no one saw my guy pointing a weapon at anybody," and Nicole,
11 could we have 129, please.

12 (Government Exhibit 129 published.)

13 Okay. This is obviously the Eric Parker prone
14 position. We've seen it many times. Mr. Marchese went through
15 it yesterday with you. And he was making the point that if
16 you're behind the barrier and BLM can't see you, it cannot be
17 an assault. Cannot be an assault -- it cannot be an assault
18 because the officers cannot apprehend fear.

19 Well, ladies and gentlemen, with respect to that
20 issue, we know, through Agent Swanson's testimony, Agent
21 Whitworth's testimony, and through other testimony that this
22 individual was seen by those officers; black hat, white
23 insignia.

24 We know he was up above that barrier because we see
25 it in Exhibit 111 that he was brandishing at one point.

1 Remember, Agent Swanson testified that he saw him come up and
2 that's what caused Agent Swanson to go up and sight in and
3 actually start to take the slack out of the trigger, because he
4 saw Parker, black hat, white insignia, pointing a weapon at
5 him. And the reason he didn't pull -- squeeze the trigger
6 completely is because he saw a van behind -- or pass behind
7 Parker that had a soccer ball on the rear window and he saw
8 children in that car and he knew that -- then, he could not
9 take the shot and he released the slack off the trigger and put
10 it on safety and he was asked the question, What could you do?
11 And he said nothing. Nothing. Waiting for him, himself, to be
12 shot.

13 And then we see through the Apley video, 109,
14 Exhibit 109, where Ranger Apley is up next to Swanson and we
15 can see Swanson from the other point of view, from down in the
16 wash, where he is bracing with his long gun and he's trying to
17 sight in. And he says, in referring to black hat, white
18 insignia, "He's turning his cap."

19 His cap is turned (indicating).

20 The early sequence is his hat, and we went
21 through this -- Mr. Dickinson went through this on
22 cross-examination, his hat's forward. He's turned it. We know
23 from that evidence -- and that's incontrovertible, the video
24 says what it says -- excuse me -- the body cam says what it
25 says. He had to have seen him, otherwise he would not have

1 known that that cap was turned around.

2 Now, can he see him here (indicating)? Probably not,
3 because he's down. He's below the barrier. He has his weapon
4 between a gap. Probably can't be seen from where Swanson is,
5 but he doesn't need to see him in this position. He knows --
6 he knows that he's taking a position where he will be
7 assaulted, and that's all that's necessary. He has seen him
8 with his weapon up. He sees him go down. He comes up and he
9 goes down. He turns his cap and he goes down.

10 We talked about this with respect to -- during the
11 cross-examination of Mr. Parker. He said yes, I changed my
12 position.

13 So to the extent that someone says, well, no one saw
14 my guy pointing, we know they saw Parker point. But we don't
15 have to prove pointing. We don't have to prove that Parker was
16 aimed in on any particular agent for assault on a federal
17 officer, or for a 924(c). All we need to show is that with
18 assault on a federal officer, that he created fear through the
19 use of a deadly weapon. Showing that weapon, under these
20 circumstances, creates fear, ladies and gentlemen. Creates
21 fear, especially under these circumstances where you have a
22 crowd gathering, demanding the cattle. And you have other
23 gunmen moving about.

24 So we have Parker sighted. We have him identified.

25 Now what about the others? What about Lovelien's

1 argument that I was down here in this part of the bridge, or
2 Engel's argument, that I -- I moved from -- you know, more in
3 the middle of the bridge down forward the end toward where the
4 state trooper is, or Mr. Leventhal's argument, well, no one --
5 no one pointed to Drexler, they had pointed to some tan hat or
6 whatever. This is a conspiracy case, ladies and gentlemen.
7 And when you enter into a conspiracy, you're responsible for
8 the acts of every co-conspirator. Everybody out there is
9 working together. When they get to the ICP, to that area where
10 Post 1 and then move to -- over to Post 2 and they see the
11 horses, and they see the events unfold before them, they know
12 exactly what is going on. They can see. Their goal is to back
13 down the BLM, to show force. As Parker said, we're there to
14 show force. The only way they can show force, show force
15 sufficient to back off the BLM, is if they have the numbers.
16 And the only way they have the numbers is if they all work
17 together.

18 Now, does Parker need to know Engel, does Engel need
19 to know Parker, does he need to know Lovelien? They don't need
20 to know who they are; all they need to know is that they need
21 each other and they can work together

22 You heard Burleson's testimony -- or -- excuse me --
23 his statements during the undercover. He said, Well, I get
24 down there and I look around and I see, I've got to get these
25 people, you know, moving together. So, I've got people up

1 there on the west -- on the north side and I've got them on the
2 south side -- he's meaning the west and the east side -- and we
3 move up and we start to flank and I've got -- I get up on the
4 bank and I've got someone above me and I'm giving him signals.
5 He doesn't have to know who that is to be in a conspiracy with
6 him.

7 All that's required to find a conspiracy, "It's not
8 necessary that the conspirators made a formal agreement or that
9 they agreed on every detail of the conspiracy. It is not
10 enough, however, that they simply met, discussed matters of
11 common interest, acted in similar ways, or perhaps helped one
12 another. You must find that there was a plan to commit at
13 least one of the crimes as I just listed as an object of the
14 conspiracy, with all of you agreeing as to a particular crime
15 the conspirators agreed to commit."

16 They understood what the plan was. Cliven Bundy said
17 go get the cattle. "Cowboys, go git 'er done."

18 The five, with the exception of Mr. Burleson, were at
19 that stage, staging area. They saw the cowboys, the 40 horses.
20 They saw the 40 horses go up on the hillside. They saw people
21 get in their cars and their trucks, with their guns, and head
22 to the ICP. Any reasonable person would know, any person of
23 common sense would know what the plan was at that point, was to
24 get the cattle.

25 They get up there, when by the time they get on that

1 bridge, what do they see, ultimately, at 11:57? They see the
2 horses push through. They see the horses. They see them line
3 up in the bottom of that wash. The same horses that were back
4 at the staging area, the same horses that Cliven Bundy said,
5 "Git 'er done." They hear the people in the wash yelling,
6 "BLM, go home." "BLM, open the gate." "Open the gate." "Give
7 us the cattle." "Give us the cattle." They're on the bridge.
8 They see the horses and the people with them, about 270 in a
9 line, move forward at about 12:13 they start forward, 12:15.
10 They hear the commands. "Back away." "Back away." "Back
11 away." All those circumstances, ladies and gentlemen, you can
12 infer that there was a plan. There had to have been a plan.
13 These people did not just, by coincidence, all gather in the
14 Toquop Wash where Cliven Bundy said to go. It's not an
15 accident. They just didn't land there.

16 So once they see the plan, once there's a plan and
17 they join it, they're responsible for everything that's
18 naturally -- that's a natural and probable consequence of that
19 crime. The crime, get the cattle. The cattle don't belong to
20 Cliven Bundy. The cattle have been impounded by court order.
21 That's the crime. The plan, get them by show of force.

22 MR. LEVENTHAL: Objection. Facts not in evidence.

23 MR. MYHRE: That action --

24 THE COURT: What was the objection?

25 MR. LEVENTHAL: Facts not in evidence to "the plan"

1 or to the "by force" or that my client knew anything about a
2 plan. There's no evidence of that. If there's a plan, there
3 wasn't any evidence that my client knew about it.

4 THE COURT: All right. He's -- he's been explaining
5 how -- how there is a plan. So, objection overruled.

6 MR. MYHRE: So the plan is Cliven Bundy stated get
7 the cattle. They see it unfold. They understand. And if you
8 recall Mr. Parker's interview with Long Bow, they said, Well,
9 you know, did you know where to go or did you head -- was there
10 a plan? He said, "It was understood." It was understood. And
11 that's what everybody understood out there. That's what the
12 evidence shows the understanding was.

13 There is no reason, ladies and gentlemen, for
14 these -- for these -- for the five defendants that are on the
15 bridge, for them to remain on that bridge, except to show
16 force. No reason.

17 They had plenty -- at some point -- we've heard the
18 argument that, well, you know, I heard shots fired or -- no. I
19 heard someone was going to be shot, so I ran down there and
20 when I got there, what? No shots were fired. No one was shot.

21 Parker said, At some point I heard lethal. There was
22 no mention of lethal or non-lethal over the loud speakers until
23 those horses and everybody had pushed up to the gate. So from
24 the time they're on that bridge till the time they come off,
25 there is no reason to stay there, except to show force. If

1 they're there for an innocent purpose, there's none shown by
2 the evidence.

3 So once they understand the plan and once they
4 understand what their role is in the plan -- and as we said,
5 they need the numbers to make this work -- they're responsible
6 for any crimes that were committed that could have been
7 foreseen to be a necessary or a natural consequence of the
8 unlawful agreement.

9 So was it foreseeable to Drexler that someone like
10 Parker would be seen by a federal law enforcement officer
11 brandishing his weapon and that that law enforcement officer
12 would be put in fear or would be intimidated? Absolutely.
13 They all came down together. They all went from the ICP up to
14 the bridge together in Lovelien's truck, with Lovelien.

15 Was it foreseeable for Engel to see whether Parker,
16 someone like Parker, would have been on that bridge? Of
17 course. He said they're going up there to take the freeway by
18 force of arms. Well, if they're going to go up there to take
19 force of arms, it's pretty likely that someone is going to use
20 a firearm.

21 Is it foreseeable that someone like a Lovelien would
22 know a Parker would be seen? Absolutely. He drove him up
23 there, as I said.

24 So, under theory -- under the law of conspiracy, you
25 don't have to worry about whether the special agent or law

1 enforcement officer or ranger pointed out any one of these
2 defendants. We know Parker was pointed out. And as
3 co-conspirators, they're liable for the fear that Parker
4 instilled into the officers who saw him.

5 What's more, if you look at the charge under Section
6 115 of Title 18, and specifically Count Eight, none of the
7 elements of threatening a federal law enforcement officer
8 requires that the law enforcement officer actually see the
9 person.

10 The elements are that the defendant made a statement
11 or did an act that constituted a threat to assault a federal
12 law enforcement officer; the defendant intended the statement
13 or act to be a threat, or made the statement or did the act
14 knowing the word or actions would be viewed as a threat; third,
15 that a reasonable person making the statement or doing the act
16 would foresee the statement or act would be interpreted by
17 those to whom the maker communicated the statement as a serious
18 threat. A reasonable person.

19 So, ladies and gentlemen, as you're deliberating as
20 to whether someone needed to see a Parker, or a Drexler, or a
21 Lovelien, or an Engel, or a Stewart in order to find them
22 guilty of 115, the answer is no; it's whether a --

23 MR. LEVENTHAL: I'm going to object as to giving the
24 law. The law is what exactly what it is. It says what it is
25 and the Court is -- is the one who gives the law.

1 MR. TANASI: Stewart joins.

2 THE COURT: I think he just read it.

3 MR. LEVENTHAL: Well, no, he's interpreting now and
4 he's talking about what -- what needs to be done and he's going
5 beyond that because the word "threat" --

6 THE COURT: He's applying --

7 MR. LEVENTHAL: -- assault is in the threat.

8 THE COURT: He's applying the facts to the law. The
9 jury will have a copy of the legal instructions and their
10 memory of the facts and how they could be applied to the law is
11 the inference that -- is the argument that the parties are
12 allowed to make. Not facts which are not in evidence, not laws
13 which are not provided. So long as we stick to the law that's
14 provided and the facts that have been presented in trial, then
15 that's what the attorneys do is argue how they should be
16 applied, how the facts should be applied to the instructions.

17 MR. MYHRE: Thank you, Your Honor.

18 So with respect to the threat count, under Section
19 115, the question's asked, Do we have to show that someone
20 actually saw any of these six defendants? The answer is no.
21 You can look at -- at the videos. You can look at 457, each of
22 the shots, the photographs, the videos that show these
23 defendants, either in low ready, or weapons brandished, hands
24 on the weapons, under these circumstances, and you can find
25 that a reasonable person, seeing this, would view this as a

1 threat. And it's hard to think of a circumstance where it
2 wouldn't be viewed as a threat for all of the reasons I just
3 stated. They're there to get cattle. The BLM has the cattle.
4 These guys have guns. Magazines are in. Hand are on the
5 weapons. They're -- weapons are being openly carried, used,
6 brandished. They're being used to intimidate. They're part of
7 a show of force.

8 So even under 115, there's no requirement that any of
9 the officers had to have actually seen it, as long as you
10 determine that a reasonable person making the statement or
11 doing the act would foresee that that statement or act would be
12 interpreted by those to whom the maker communicated that
13 statement as a serious threat.

14 The fourth element is that "the threat was made with
15 the intent to impede, intimidate, or interfere with a federal
16 law enforcement officer or to retaliate for the performance of
17 his or her official duties."

18 We've already touched on that, but under these
19 circumstances, as the evidence shows, there's only one reason
20 why they're there, and that's to get the cattle, which impedes
21 and interferes, and intimidates the officers.

22 Now, there's also another legal means by which these
23 defendants may be found guilty with respect to the assault on a
24 federal officer charge as well, or the threat charge, and
25 that's aiding and abetting. We believe the evidence is

1 overwhelming that there's a conspiracy, for all the reasons I
2 just stated, but even if, for some reason, there was some
3 question as to whether or not everybody got together and
4 agreed, you can be similarly liable as an aider and abetter.

5 And as an aider and abetter you're liable if "the
6 crime was committed by someone; the defendant aided, counseled,
7 commanded, induced, or procured the person with respect to at
8 least one element of the crime; that the defendant acted with
9 the intent to facilitate the crime; and the defendant acted
10 before the crime was completed."

11 Now, in this -- if I could have that back up again,
12 please. Sorry.

13 Now, with 129, for example, we know that Stewart is
14 to the right of Parker in this particular view and we know from
15 Parker's testimony that Stewart gave him the backpack that he's
16 resting his elbow on. By assisting Parker, by helping him
17 improve his position, by helping him become more comfortable in
18 his position, he has aided and abetted. He has assisted.

19 Now, we believe the evidence shows Stewart's equally
20 a co-conspirator, but if -- that's one example of aiding and
21 abetting. And as I talked before, that everybody was down
22 there working together, they're all aiding and abetting one
23 another. They're all assisting each other. They're assisting
24 each other by encouraging one another. How are they
25 encouraging one another? By their very presence. By their

1 numbers.

2 BLM is not just going to leave. Those -- those
3 officers are -- their job is to protect that area. Their job
4 is to hold Post 2. They're not just going to walk away because
5 people call them names or stand in front of them yelling at
6 them. If you recall, Agent Carpenter's body cam video, he said
7 it's the weapons, it's the firearms that are the game changer.
8 So the game changer are the people with the firearms and by
9 being present, they are aiding, encouraging, helping the people
10 in the wash who are advancing toward the gate. They're
11 encouraging, helping one another on the bridge, by their
12 presence. Burleson's presence in the wash is helping, aiding
13 and assisting those he's working with and those who are moving
14 toward the gate to get the cattle, to commit the extortion. So
15 they were all aiding and abetting one another.

16 So just -- just to reenforce that point. We talked
17 about how the presence of the weapons is not going to -- or --
18 excuse me -- that the presence of those people standing there
19 yelling or calling them names or screaming at them is not going
20 to make the BLM back away. Similarly, even without the people
21 in the wash, one person on that bridge probably is not going to
22 move the BLM, or one person in the wash with a gun, or one
23 person on the bridge with a gun is going to force the BLM to
24 back away. They have between 25 and 30 officers. So they need
25 the numbers and it takes more than just one gun. It's going to

1 take several guns and it's going to take the positions that
2 those guns take. And the positions that these guns take are on
3 the high ground, tactically superior positions. The guns are
4 moving throughout the crowd.

5 So you can see, ladies and gentlemen, that this
6 cannot happen without each other and that's the theory of
7 aiding and abetting and conspiracy as well.

8 Now I'd like to just touch upon some of the -- with
9 respect to each of the individual defendants -- what they had
10 raised during their closing statements and then we'll sort of
11 wrap this up.

12 First of all, with respect to defendant Lovelien, he
13 says that, well, he couldn't have been in his line of sight of
14 any of the agents because he was down on the bridge.

15 If I could have 364, please.

16 (Government Exhibit 364 published.)

17 This was the photograph taken by Agent Briscoe down
18 in the wash. As you recall, he was behind the truck and moved
19 out to take a photograph.

20 (Indicating) that's in the line of sight.

21 You know from Agent -- excuse me -- Officer Madsen's
22 dash cam, which was brought in through Officer Serena, where
23 Engel is by the -- when he is up in that area where the NHP
24 officers are. He's looking over the barrier and he's pointing
25 at something. Well, he's pointing, as he says, he's pointing

1 at BLM positions where they're aiming weapons at him. Well, if
2 he can see the BLM, they can certainly see him. And if they
3 could see him, they can see Lovelien who is right in the same
4 area.

5 So again, to the extent that that's an issue,
6 Lovelien was clearly in a position where he could show his
7 weapon and brandish it and be seen, but again, as we've stated,
8 it doesn't matter whether they specifically saw Lovelien
9 because Lovelien was there to support all of the others, and
10 Lovelien aided and abetted because he drove Parker, Drexler,
11 and Stewart up there.

12 Lovelien's Facebook accounts, ladies and gentlemen,
13 clearly make him out to be a recruiter. He's calling others to
14 come to Bundy ranch. He's connected with Ryan Payne through
15 OMA. Mr. Perez said, well, you know, the posting of -- some of
16 them was with his sister. Well, his sister was also a member
17 of the Montana Defense Force. And we also see where the
18 objectives of OMA are published on that particular e-mail
19 through -- or with respect to Cheyenne Miller, the sister of
20 Lovelien. So Lovelien's aware of OMA. There's communication
21 with Ryan Payne. He's aware of the objectives that have been
22 published by OMA, which include to get Cliven Bundy's cattle.
23 So you can infer from that that when Lovelien goes down to
24 Bundy ranch, he knows one of the goals is, one of the three
25 objectives, is to get Cliven Bundy's cattle.

1 He said he went to -- Mr. Perez, said well, he went
2 to prevent violence. What exactly does that mean? In other
3 Facebook postings that he has, he's told -- and I believe it's
4 at -- I even wrote it down correctly -- Exhibit 213, there's a
5 series of posts where he's told if you go down there, you're
6 going to -- you might provoke something. You might provoke
7 violence. He says I'm going to go anyway.

8 When any of these defendants, either in their
9 Facebook postings or in their testimony, or in their interviews
10 from -- with Long Bow say, I -- we wanted to be peace makers,
11 what they're saying is peace on our terms, and that's what
12 . . . Lovelien means as well. Means, yeah, we -- we -- we're
13 coming with guns and with ammunition. We want peace, but we
14 want it on our terms. We want BLM to be gone and we want the
15 cattle back.

16 Mr. Perez said, well, BLM should have left. If they
17 had just left, none of this would have happened. Well, the
18 same can be said about Cliven Bundy; right? Well, if he had
19 taken his cattle off the land, none of this would have happened
20 either. BLM would not have had to be there in the first place
21 if he had removed his cattle.

22 So what's the point?

23 The point is, is that when Lovelien went down there,
24 he had the intent to somehow have a confrontation with the BLM.
25 He didn't know precisely what it would be. He went to protect,

1 according to some of his Facebook posts. We know he became the
2 head of the militia camp. We know that Parker, Stewart, and
3 Drexler went to the militia camp. What do you think they
4 talked about in that militia camp? Could they have talked
5 about Ryan Payne? Could they have talked about OMA? Could
6 they have talked about the objectives? Absolutely.
7 Absolutely.

8 MR. JACKSON: I'm going to object. There's no
9 evidence of what they talked about. It's mere speculation by
10 the prosecutor at this stage.

11 MR. TANASI: Stewart joins, Your Honor.

12 MR. MARCHESE: Parker joins.

13 MR. LEVENTHAL: Drexler joins.

14 PRO SE ENGEL: Engel joins.

15 MR. PEREZ: There's also no evidence, Your Honor,
16 that Mr. Lovelien was in charge of the militia.

17 THE COURT: All right. Mr. Myhre didn't say there
18 was evidence and he didn't say that the evidence showed that or
19 that there -- we had -- that was presented. It's an inference
20 that he's asking the jury to draw from the -- from the facts
21 that have been admitted. So it's permissible.

22 The objection is overruled.

23 MR. MYHRE: Mr. Perez said something to the effect of
24 . . . you need to decide or you should decide whether the . . .
25 whether Mr. Lovelien was going down to exercise First Amendment

1 rights. There is no -- ladies and gentlemen, there is no
2 First Amendment defense. First Amendment is not -- this case
3 is not about the First Amendment nor is it about the
4 Second Amendment. Everybody has a Second Amendment right to
5 own a gun, to have a gun, to carry a gun. There is no Second
6 Amendment right to threaten someone with a gun. Nor is there a
7 First Amendment right to threaten somebody. And there's
8 certainly no First Amendment right to threaten a law
9 enforcement officer. Nor is there a Second Amendment right to
10 carry a weapon to threaten a law enforcement officer. It's not
11 the carrying, ladies and gentlemen; it's the intent behind the
12 carrying. That's what you need to decide. What was their
13 intent when they're on the bridge? Whether they're armed --
14 whether their weapon is slung over their shoulder or whether
15 it's at the low ready, or whether it's in some other position.
16 If they're carrying that weapon, with the intent to extort,
17 with the intent to threaten, to show force, then they violated
18 the law and there's nothing about the Second Amendment that
19 even enters into it.

20 It's the same with the First Amendment and this
21 notion about protesting. Everybody has -- one of the dearest
22 rights we hold in this country is the First Amendment.
23 Everybody has a right, as an American citizen, to speak their
24 mind and say what's on their mind. But that's not what this is
25 about. You can say what's on your mind, but you can't level a

1 threat at somebody.

2 You can't, as part of your First Amendment right,
3 say, go get my cattle, when me getting the cattle means you
4 have to extort the BLM to get it.

5 So, if, during deliberation says -- someone says,
6 well, this is about the First Amendment or the Second
7 Amendment, no, it's not. There's nothing about the First
8 Amendment or Second Amendment that immunizes the conduct here.
9 We're talking about criminal activity, criminal state of mind.
10 What were they doing? Why were they doing it?

11 Mr. Perez said, well, the Government's advanced no
12 evidence that Mr. Lovelien had met Mr. Bundy or met Mr. Payne.
13 Again, for conspiracy, we don't need to show that people met.
14 We don't need to show that they talked to one another, that
15 they made phone calls. What we have demonstrated in this case
16 and what we have shown beyond a reasonable doubt is working
17 together, concert of action, each understanding, based on what
18 they see what the other is doing. So whether Lovelien met or
19 didn't meet Payne really is irrelevant.

20 MR. JACKSON: I'm going to object to that,
21 Your Honor. That's a misstate of the law. I think . . .

22 THE COURT: I don't think concert of action is -- is
23 stated in the legal instruction.

24 You want to rephrase that, Mr. Myhre?

25 MR. MYHRE: With respect to -- to demonstrate a

1 conspiracy or to prove a conspiracy, we do not have to
2 demonstrate that people met with one another or show -- it's
3 enough for us to show that they are working together, and we
4 call that concert of action, where people are -- going back to
5 the Parker statement, it was understood. They understand based
6 on what they see. So whether Mr. Payne actually met with
7 Mr. Lovelien is irrelevant. We know they talked to one another
8 on Facebook. And we know that Payne is at the stage on
9 April the 12th when Cliven Bundy says go get my cattle because
10 we saw the video, the Lynch video, where's he's on the stage
11 and all the militia members with their guns are walking by him
12 and he puts his thumbs up, like this (indicating), and he
13 kneels down and he speaks with another militia member, right
14 after the command is to go get my cattle. Clearly evidence of
15 a leadership role by Payne.

16 Nor is it necessary for him to meet with Mr. Bundy
17 under the same -- same theory.

18 Same thing with Mr. Burleson. He didn't know the
19 defendant. There was no communication. Or, excuse me. He
20 didn't know Mr. Bundy, there was no communication with
21 Mr. Bundy. Well, we know from his Facebook postings that
22 before he even left Arizona he indicated what he was going to
23 do. He was going to face off with federal agents. We know
24 from his undercover interview, the Long Bow interview, that he
25 said, I went to Bundy ranch with the intent to kill federal

1 agents. He described them as rogue federal agents. He -- we
2 know that he had communication with militia because he said in
3 his undercover interview that they had a militia council, that
4 this whole issue involving the Bundy family was discussed and
5 decisions were made by the council that they were going to go.
6 And you have the Burleson interview. I'm not going to recite
7 all of it again, and Mr. Dickinson played a great portion of it
8 yesterday. But we know his intent directly from what he has --
9 what he said in the Long Bow interview. So whether he met with
10 Mr. Bundy or knew Mr. Bundy is completely irrelevant. He knew
11 what he was doing --

12 MR. JACKSON: I'm going to object. Whether it's
13 relevant or not is for the jury to determine and the
14 prosecutors's personal opinion on whether it's relevant is
15 irrelevant. The jury can determine that. It's not the law and
16 his personal opinion --

17 THE COURT: Objection's overruled.

18 MR. MYHRE: Your Honor -- thank you.

19 Mr. Burleson, as well, was not just walking in the
20 wash. He was flanking. He said it in his Long Bow interview
21 that he was flanking. He was flanking to the BLM's right,
22 which would be his left as you look toward the gate area. And
23 it's borne out and corroborated by Exhibit 457. And when you
24 go through there, and we went through in court, as you review
25 it again, you'll see, sequentially how he moves up the left and

1 gets up to the west side of the northbound -- or southbound
2 lane, up to that ramp area where the -- what we've been calling
3 sort of the ramp.

4 So to the extent, ladies and gentlemen, you have any
5 question in your mind as to whether Mr. Burleson may have had
6 too much to drink or maybe wasn't feeling well when he gave
7 that interview, well, we submit the video doesn't show that.
8 The video shows him alert, his thought process very clear, very
9 good recall, but what he said is corroborated by the physical
10 evidence in this case, by the photographs and by the videos and
11 by the sequence as revealed in Exhibit 457. He says he's
12 moving to the left on the BLM's right flank. So he's moving up
13 the left side of that wash. He says when he gets there, he has
14 someone above him, he's giving arm signals to. He says he
15 sights in, and, remember this (indicating) -- sights in to
16 the -- to the mercer -- to the contractor who's up in the
17 front -- meaning Dan Love -- "He's mine." "He's mine." I'm
18 going up there, "I'm going to chop his head off," is what he
19 said.

20 He also said that -- you know, Mr. Jackson made the
21 point of saying, well, you know, he never pointed his weapon.
22 Well, we've already been through that, but nevertheless,
23 Burleson says in his undercover, "I sighted in and I brought it
24 down low ready so that if I had to, I could go right up again."
25 He says the same thing to Agent Caputo, that he pointed his

1 weapon at the agents. He tells Agent Caputo how he -- what
2 he's taking with him that day. He says the same thing in the
3 Long Bow interview. The same equipment he describes in the
4 Long Bow interview is visible in the photographs and the video.
5 It all lines up. It all reenforces the other pieces.

6 There was no impairment. There was no confusion by
7 Burleson during his undercover. It's fully corroborated by the
8 evidence.

9 Mr. Jackson also raised the point about, well, there
10 seems to be some sort of schism between Metro and the BLM. I'm
11 not sure what that meant or what it was intended to mean, but
12 ladies and gentlemen, you saw the evidence of the BLM officers.
13 You saw the evidence of the NHP and the Metro officers that
14 were out there. They're all consistently saying the same
15 thing, that what they saw, they had never seen before. That
16 what they saw gave them great fear because you had an angry mob
17 intermixed with guns. That's a recipe for disaster.

18 Mr. Jackson also talked about no fear, now I will
19 return to that at the end here.

20 Mr. Leventhal, with respect to Mr. Drexler, again,
21 going to Long Bow, suggesting that there's something nefarious
22 about it, we've already discussed that. But he said there's
23 really nothing connecting his client to this conspiracy.

24 Ladies and gentlemen, his -- we -- we've shown you
25 the photograph of him on the bridge prone. He is prone with

1 his weapon in a gap between the Jersey barriers. When you look
2 at that photograph, up to the very right you see three Arizona
3 State Militia people on the west -- east side of the southbound
4 lanes. He can see what's going on underneath the wash and for
5 all the reasons we discussed before, the same applies to
6 Drexler. He's helping, he's assisting, he's aiding and
7 abetting by his very presence, but not only by his presence,
8 but by what he is doing there. He is aiming his weapon. He is
9 using his weapon to threaten.

10 Implicit in Mr. Leventhal's argument is that there's
11 something about April the 6th and April the 9th that was giving
12 some sort of reason for what Drexler did. Again, there is -- a
13 federal officer -- let me read from the jury instruction
14 itself. "A federal officer acting in the good faith
15 performance of their duties may not" -- "may not be forcibly
16 resisted."

17 There is no excuse or justification for resisting a
18 federal law enforcement officer. There may be some -- if
19 there's a disagreement about what a federal law enforcement
20 officer is doing, there are other means to address it. You can
21 sue them. Sue the department. Remember Agent Swanson said,
22 when he was going through the whole sequence of engaging
23 Parker, he said we're accountable for every round that we ever
24 fire. Law enforcement officers have -- they're accountable to
25 an organization and they're accountable under the law civilly

1 for any actions they take, but with respect to the performance
2 of their duties, they have the right not to be assaulted. If
3 they are acting in the good faith performance of their duties
4 they may not be forcibly resisted by another. And all of the
5 evidence shows they were in the very much the good faith
6 performance of their duties. They were acting pursuant to
7 court orders.

8 So if someone says well, maybe there's some excuse or
9 reason for all of this, there's none revealed by this evidence.
10 There is no self-defense. There's no defense of another.
11 There is no justification, and that's pointed out in the jury
12 instructions, the law as the Court has given it to you.

13 Mr. Stewart I believe we covered. We talked about
14 the Judge -- Judge George order. Again, he says he's not in a
15 conspiracy. He's just -- he was just there. His -- his weapon
16 was below the Jersey barrier. All the reasons we discussed
17 before, they're all working with each other. And ladies and
18 gentlemen, as a matter of common sense, you see the sequence in
19 457. He's like this (indicating) below the barrier, just the
20 barrel of his weapon is above the Jersey barrier. He didn't
21 stay in that position the whole time. We know from 129 he
22 moved down the bridge. He had to have gotten up. And
23 remember, those officers are looking at that bridge, through
24 optics and so when he got up, his weapon was brandished.
25 Either way, whether it's as part of the conspiracy, or as a

1 threat to a federal officer, the way he was holding his weapon
2 on that bridge is a threat. Could be reasonably interpreted to
3 be a threat.

4 Mr. Parker we've addressed about they didn't see him
5 prone, he's behind the Jersey barrier. They put words in my
6 mouth, at the Long Bow. We've discussed that.

7 We discussed the issue with court orders and
8 Mr. Marchese raised of the order, whether they could hear the
9 court orders or not. Ladies and gentlemen, as part of the
10 conspiracy, the violation or the interference with those court
11 orders, the obstruction of justice as members of those -- that
12 conspiracy, they're liable, they're guilty of that count
13 regardless of whether they actually read the orders or saw the
14 orders. It was reasonably foreseeable when they went down
15 there and BLM's gathering of the cattle, there're probably
16 court orders. But if there's any doubt, we've heard the
17 Johnson video and the number of times those warnings were
18 given.

19 Mr. Marchese talked about the chaos. We've talked
20 about that. There was no confusion. Certainly not by the
21 Bundy brothers, Ammon, Ryan and Dave. Certainly not by any of
22 the law enforcement officers who saw what was going on. They
23 saw exactly what was going on.

24 Mr. Engel said, "I was there to protest. I was there
25 to keep the peace." Again, keep the peace? On what terms?

1 His terms.

2 He says, I went over to the . . . and I'll probably
3 wrap up, Judge, in about 20 minutes. I don't know if you want
4 to go that far.

5 THE COURT: Okay.

6 MR. MYHRE: Engel said, reading from Exhibit 297,
7 that he went over and he -- he met with the NHP and that they
8 made the phone call and he talked about, during his closing
9 argument, that I was there with NHP. Well, NHP doesn't
10 immunize Engel's conduct. First of all, if you recall Officer
11 Serena's testimony, Engel didn't even say who he was; he said
12 I'm a citizen of Nevada. Okay? And not only that, but what is
13 he saying he's doing? He's -- he's -- he's using NHP to try to
14 take down a "sniper position" from BLM, to have the BLM
15 officers in the wash lower their weapons. He's trying to
16 enlist the help of NHP to weaken BLM's position, to help them
17 force them away. So there's nothing about NHP or his
18 involvement with NHP that at all excuses or justifies his
19 conduct. Again, he's there, he's on the bridge, he's
20 reenforcing, he's helping. He's actively trying to get BLM to
21 take down a position.

22 What did he say on 4-13? Did he say he was trying to
23 keep the peace the very next day at the conference? No. He
24 said -- when -- when Cliven Bundy asked, What did I say he
25 said, "Disarm the Park Service so we can bury them -- bury

1 those weapons. Cowboys, get your guns. We're going to get our
2 cows. 40 cowboys. 300 vehicles loaded up with all their
3 people and their weapons and hauled butt in that direction to
4 support them." "To support them." That's what he said on the
5 13th. Not to make peace. Not to protest. Not to stand
6 around, but to support the people on the horses, the 40
7 horsemen to get the cattle. And he said 300 people loaded up
8 in their trucks and their cars with their weapons and went
9 there. So, he knew exactly what was going on.

10 Ladies and gentlemen, there's an old saying that when
11 people show you who they are, believe them. And Engel has
12 shown who he is. He's shown who he is in the video evidence we
13 have of him, tacked out on that -- on that freeway, running to
14 the northbound bridge, toward the northbound bridge, getting on
15 that bridge, staying there. We have -- we know what he says in
16 the immediate aftermath when there's no reason for him to say
17 anything other than what actually, in his mind, went on, and we
18 know he said support those people going to the bridge -- or
19 going to get the cattle. We know from Exhibit 303 on the 10th
20 of January of 2016 he says that Bundy ranch is a blueprint, a
21 blueprint for the future. His intent is to do it again.

22 He stood before you and said it was an honor. What
23 honor is there in this? In what occurred on the 12th?

24 He said, on the March 3rd, 2016, when we see in
25 Exhibit 209, he said, "The feds are making a purge. They're

1 going to cut the head off the resistance." Does that sound
2 like someone who wants to make peace? Who wants to make things
3 non-violent?

4 "There may be a gun battle between patriots and
5 feds."

6 That's who Mr. Engel is. You see it in the video.
7 You see it in the photographs. You can't be two people at
8 once. You can't be someone who stands in court and says, "I'm
9 humble" and then gets on a video and says, "There may be a gun
10 battle between patriots and feds."

11 Now, ladies and gentlemen, I'm sure there may be some
12 things I missed, some evidence I -- I didn't cover.

13 Mr. Dickinson went over with you in the 924(c)'s the
14 brandishing and the carrying and we commend those instructions
15 to you carefully. Brandishing is just showing the weapon with
16 the intent to impede or intimidate or threaten.

17 The same thing with carrying, and we've talked about
18 that.

19 The last point I want to touch with you is the "no
20 fear" and then the case will be yours.

21 Mr. Leventhal used the word "noble" -- "noble" -- to
22 describe what happened on April the 12th.

23 MR. LEVENTHAL: Objection. That's misstates the
24 argument.

25 MR. MYHRE: You will recall what the argument was.

1 There was nothing noble about this.

2 Many of the defendants said, well, maybe the BLM
3 officers weren't afraid. Because they said a joke or they said
4 something that, you know, in the friendly confines of the
5 courtroom in a very nice room where everything is well and
6 orderly might not seem appropriate. But ladies and gentlemen,
7 while we don't have to prove actual fear, we only have to prove
8 that they were afraid under the -- a reasonable person or a
9 reasonable officer in those circumstances would be afraid, and
10 you'll see that in the instruction, so you can determine
11 whether or not, given all the circumstances they were faced
12 with, whether someone would be afraid, a reasonable officer
13 would be afraid. But we've shown actual fear. You've heard
14 from each of the witnesses, the BLM officers, the Park Service
15 officers. You heard from Metro and NHP. You heard what they
16 saw. You heard how they felt.

17 They were outnumbered down there. According to
18 Agent Simpkins, he counted 410 people on the bridges and in the
19 wash against 25 to 30 officers -- 25 to 29 officers, between
20 the time the skirmish line formed to the time they pushed up.
21 You've seen countless video about how that occurred. These
22 officers were in the fatal funnel. There were people on the
23 high ground. There were people on the bridges. There were
24 gunmen moving in and out of the crowd. There were gunmen
25 moving up onto the high ground, onto the slopes of the bridges.

1 They were moving on the bridges themselves, the northbound.
2 They had people in the southbound literally right over the top
3 of them, screaming -- and you heard it. You heard it in the
4 Johnson video, you heard it in the Sones dash cam -- screaming
5 at them, calling them every name in the book, throwing things.
6 And really? Faced with that, they're going to sit here and say
7 now, oh, they should have not said that. Oh, why did they say
8 that?

9 Ladies and gentlemen, anybody -- as the Court has
10 said, reasonable doubt is based on common sense. And you know
11 from your common sense and your life experiences that anybody
12 faced with that amount of stress, in those conditions, one of
13 the ways to relieve that -- anybody who's been in war or is in
14 combat or in a combat zone knows, that one of the things you do
15 is to try to make light of the situation. It relieves the
16 stress. But more importantly, it keeps them under control.
17 They're law enforcement officers. They thought they were going
18 to die, but, their training kicked in. Their training kicked
19 in, and they were able to keep their cool. And because of
20 that, there was no violence, there was no death -- there was
21 violence. There was no death. There was no injury.

22 So when Mr. Marchese says no harm, no foul, there was
23 a severe foul. The fact that no one was hurt doesn't mean that
24 nothing was taken that day, taken from those officers.

25 First of all, they got the cattle, so that's one

1 thing that they got. But they also left those officers with a
2 memory . . . they may never be able to erase.

3 There was nothing noble. There was nothing
4 honorable.

5 You remember Agent Swanson's testimony when he was
6 asked, after the encounter with Parker and he says, well, did
7 you have -- how did you deal with the fear. He said, I looked
8 down, I said a prayer, and I asked God to take care of my wife
9 and children if I didn't make it out. Then I said an Our
10 Father and I went back to work. That's the mindset of a
11 professional. That's the mindset of a law -- trained law
12 enforcement officer. Take a time-out, make my peace, and get
13 back to work. I asked every single -- most of the officers we
14 asked, I asked a number of officers, Why didn't you just leave?
15 Leave? Why would I leave? I'm told to hold the post. I'm
16 told to hold Post 2. That's my job. That's my job. And these
17 guys (indicating) jumped them. They got a gang of thugs
18 together, they got their guns and their magazines, no --
19 Swanson's accountable.

20 They're accountable to no one, and they don't want to
21 be accountable today either. They jumped them. And they put
22 the fear of God into them. For what? For some cattle? For
23 someone who hasn't paid grazing fees for 20 years? Or to maybe
24 feel like they're somebody for a moment in time.

25 No harm, no foul? Absolutely there was a foul.

1 We've heard quotes and I'm not going to hit you with
2 another, I'm going to hit you with a brief quote, but we've
3 heard about Gandhi and a number of others. The quote that
4 comes to mind most for me is from John Adams, one of the
5 founding fathers of our country, the successor to
6 George Washington, the second president of the United States.

7 He famously said, "We are a nation of laws, not men."
8 And by that he meant, is that we order our society, we order
9 our daily lives, not by the gun, but by the law.

10 And these people (indicating), these people took the
11 law into their own hands and used guns to get something that
12 didn't belong to them for someone they didn't even know.

13 That day, they won, according to Engel. But today,
14 ladies and gentlemen, today we are not in a stage -- on a
15 stage. We're not in a wash. And we're not on a bridge. We're
16 in a courtroom. In this room things are not decided by the
17 power of the gun, but by the power of the law. Things are not
18 decided by the strength of the number of people you can pull
19 together for a short time to get your way; things are decided
20 with the strength of the evidence. And if things in this room
21 ever stop being that way, if things are no longer decided by
22 the evidence and the law, then we've truly lost our way.

23 Being a juror is a difficult assignment. It's a high
24 responsibility. Nobody likes to sit in judgment of another
25 human being. We're all flawed. We all have our strengths; we

1 all have our weaknesses, but your job and your oath is not to
2 sit in judgment of a human being, but to sit in judgment of the
3 evidence in this case. And when you look at the evidence in
4 this case, it leads to one place. One place. And it's right
5 over there (indicating). Defendant Parker, Defendant Stewart,
6 Defendant Engel, Defendant Drexler, Defendant Lovelien, and
7 Defendant Burleson.

8 Ladies and gentlemen, we thank you for your time.
9 Most importantly, we thank you for your attention and your
10 service. We ask that you return a verdict of guilty on all
11 counts as to each of those defendants because the evidence has
12 shown it beyond reasonable doubt.

13 Thank you.

14 THE COURT: All right. Before we recess, I'm going
15 to have Aaron swear in our Court Security Officer so that he
16 can take the jury back to begin deliberation during lunch.
17 Lunch is there.

18 COURTROOM ADMINISTRATOR: "You do solemnly swear to
19 keep this jury together in some private and convenient place,
20 that you will not permit any person to speak to or communicate
21 with them nor do so yourself unless by order of the court or to
22 ask them whether they have agreed upon a verdict and that you
23 will return them into court when they have agreed -- when they
24 have so agreed or when ordered by the Court, so help you God?

25 THE CSO: I will.

1 THE COURT: All right. So the jurors in this case
2 will be Jurors Number 1 through 13, that's all eight people on
3 the top and then the four on the bottom that are closest to --
4 to Mike, to the CSO. That means that Jurors No. 14, 15, and
5 16, the other three, you are the alternates, but you are not
6 excused; you're still on call. So if anything were to happen,
7 if any of the jurors get sick or any other kind of accident and
8 they're not available to continue with deliberation, then
9 you'll be called in and deliberations will start over again
10 with you participating in that deliberation.

11 So we're going to have Jurors 1 through 13 -- because
12 remember, we excused Number 12, that's why it's 13 if you're
13 looking at me funny about I can't count, but it is -- it's 12
14 jurors total, but we don't have Number 12, so Number 13 is on
15 the jury -- you can all follow Mike and go into the
16 deliberation room to begin your deliberation and then the other
17 three jurors are welcome to also have lunch, or take it with
18 you, whatever you would like in -- in the conference room, but
19 I do need to make sure that the three alternates provide Aaron
20 with all of your contact information so that if we do need to
21 call you to come in to begin deliberation, we can contact you
22 right away.

23 Also, if you are not used for deliberation but you
24 would like to be here if there is a verdict, you can also let
25 Aaron know and we'll call you so that you can come in for that

1 if you're interested.

2 All right.

3 Oh. Also -- so there was a question that I have as
4 to the deliberation. So, if -- when you get back there, as you
5 remember from the instructions, the first thing you do is you
6 choose a foreperson and then discuss what your schedule will
7 be. I give a lot more latitude to my jury and I treat you as
8 adults and I know that you all have lives. So, I let you set
9 your hours for deliberation, but you can't begin deliberation
10 any sooner than 8:00 a.m. and you should not try to deliberate
11 any later than 4:30. But if, on a particular day, someone has
12 something going on and needs to start deliberation a little
13 later or leave a little earlier, that's all right. You all can
14 decide to do that, but you always have to be together when you
15 deliberate. So you're free to stay here, you're welcome to
16 stay until 4:30 today and then it will up to you if you want to
17 come back tomorrow because I'll be here with other things that
18 I'm doing so I'm available. If you want to deliberate
19 tomorrow, the room is available and everything is available
20 here for you from 8:00 to 4:30 if you'd like to. If you choose
21 not to, because on our schedule we didn't anticipate that you
22 would need to be here on Friday, so if you can't be here on
23 Friday and you all decide not to deliberate on Friday, just let
24 us know so that we have a clear understanding of what your
25 schedule will be. So if you're not going to be deliberating

1 tomorrow, let us know when, on Monday, you're going to come
2 back and all the communication can go ahead and either be
3 written in a note or you can tell Mike just as far as the
4 scheduling for your calendar goes.

5 All right. So, members of the jury, Number 1 through
6 13, if you'll please stand and follow Mike and then the other
7 three will be going back into the same room where you were
8 before, the conference room.

9 Oh, you're going to take them all because they all
10 have all their items in the conference room. Okay. That's a
11 good idea.

12 But the food's already been separated; right?

13 COURTROOM ADMINISTRATOR: I believe he's going to do
14 that as well.

15 THE COURT: Okay.

16 As for the attorneys, I do have court in here
17 tomorrow morning so you are going to have to take everything
18 off of the tables.

19 (Jury retired to the jury room to begin its deliberations
20 at 12:49 p.m.)

21 THE COURT: All right. The jury has left the
22 courtroom and we're off record.

23 (Recess was taken at 12:49 p.m.)

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COURT REPORTER'S CERTIFICATE

I, Heather K. Newman, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

DATED: _____ /s/ Heather K. Newman
Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER